SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 819

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, TEXAS & NEW ORLEANS RAILROAD COMPANY ET AL., APPELLANTS

vs.

THE STATE OF LOUISIANA, LOUISIANA PUBLIC SERVICE COMMISSION AND LOUISIANA HIGHWAY COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA

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1 [Caption omitted.]

2 In United States District Court, Eastern District of Louisiana, New Orleans Division.

No. 96—In Equity

Bill of complaint

Filed Nov. 16, 1932

To the Honorable the United States District Court, Eastern District of Louisiana, Baton Rouge Division:

The plaintiffs, State of Louisiana, Louisiana Public Service Commission, and Louisiana Highway Commission, appearing through Gaston L. Porterie, attorney general, and Wylie M. Barrow, special assistant to the attorney general, their attorneys, bring this, their bill of complaint, against the United States of America and the Interstate Commerce Commission, and for cause of action respectfully shows:

I

(a) The Louisiana Public Service Commission, composed of Francis Williams, chairman; Dudley J. LeBlanc and Harvey G. Fields, commissioners, is a political corporation created by, organized and existing under and by virtue of the Constitution of the State of Louisiana, article VI, sections 3 to 9, inclusive, and is the duly constituted authority of the State of Louisiana to govern, regulate, and control the rates charged or to be charged on intrastate traffic by railroad within the said State, and having its domicile fixed by law at Baton Rouge, Parish of East Baton Rouge, Eastern District of the State of Louisiana.

(b) The Louisiana Highway Commission, composed of A. P. Tugwell, chairman; J. M. Nugent, vice chairman; and F. W. Raggio, secretary, is a political corporation organized, existing, and exercising its functions under and by virtue of Act No. 95 of the extra session of the Legislature of the State of Louisiana of 1921, and having its domicile fixed by law at Baton Rouge, in the Parish

3 of East Raton Rouge, Eastern District of Louisiana. The said highway commission is a large shipper of sand, gravel, shells, and crushed stone in the State of Louisiana, on shipments of which the freight charges are paid by the said commission out of the highway funds of the State of Louisiana.

II

This is a civil cause involving a sum, exclusive of interest and costs, in excess of $3,000.00, and arises under the Constitution and laws of the United States, and particularly the acts of Congress known as

the Interstate Commerce Act and the Transportation Act, 1920, and challenges the validity of the order of the Interstate Commerce Commission dated November 7th, 1932, as follows:

ORDER

At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 7th day of November, A.D. 1932.

No. 25135

Increases in intrastate freight rates and charges, part 5—Louisiana

It appearing, That by order dated April 4, 1932, the commission upon petition of various carriers entered upon an investigation under Docket No. 25135, to which investigation all railroads subject to the jurisdiction of the commission within the several States designated in said order were made respondents, and that the investigation was divided into several separate parts, one for each State whose rates and charges were brought into question, and that the commission on September 29, 1932, made and filed its report in the above-entitled proceeding, containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof,

4 and cause appearing therefore:

It is ordered, That the respondents herein, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist from practicing the unjust discrimination against interstate commerce found in said report to exist, and to establish, put in force, and maintain for the transportation of sand, gravel, shells, crushed stone, and similar road-building materials; salt cake; fertilizer and fertilizer materials; cottonseed cake, meal, bran, hulls, and meats; pulpwood; stave bolts; refined sugar; sweetpotatoes; fresh vegetables; pulverized limestone; waste wood; second-hand sugar bags; waste paper; soya beans, velvet beans, Austrian winter peas, and cow peas; rosin sizing; potash nitrate; sirup and molasses; blackstrap molasses; crude fire clay; clay, n.o.i.b.n.; charcoal; bolts; and all less-than-carload traffic in intrastate commerce within the State of Louisiana, rates which shall be not lower than the rates now in force and applicable to the intrastate transportation of said traffic within the State of Louisiana, plus the surcharges authorized by the findings in Fifteen Percent case, 1931, 178 I.C.C. 539, and 179 I.C.C. 215, on corresponding interstate traffic so long as such surcharges are maintained on such traffic in accordance with said findings.

It is further ordered, That this order shall become effective on December 16, 1932; that respondents shall comply therewith upon not less than one day's notice to this Commission and to the general public by filing and posting in the manner prescribed in section 6

of the Interstate Commerce Act; and that it shall remain in force until the further order of the Commission.

By the Commission.

[SEAL] GEORGE B. McGINTY,
Secretary.

5 ORDER

At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 7th day of November, A.D. 1932

No. 25135

Increases in intrastate freight rates and charges, part 5—Louisiana

Upon further consideration of the record in the above-entitled proceeding, and upon consideration of petition on behalf of the New Orleans Joint Traffic Bureau to amend and modify the findings herein so as to exempt raw sugar and bagasse, or, if such exemption cannot be made upon the present record, to reopen the proceeding for further hearing with respect to these commodities:

It is ordered, That the above-entitled proceeding be, and it is hereby, reopened for further hearing with respect to raw sugar and bagasse at such time and place as the Commission may hereafter direct.

By the Commission.

[SEAL] GEORGE B. McGINTY,
Secretary.

III

The aforesaid order is a direct regulation by the Interstate Commerce Commission of intrastate freight rates and charges within the State of Louisiana, and is ultra vires, null, and void, and was made upon the petition of numerous railroads, including the following railroads operating within the State of Louisiana, viz:

Arkansas & Louisiana Missouri Railway Company.
The Chicago, Rock Island & Pacific Railway Company.
Christie & Eastern Railway Company.
6 Gulf, Colorado & Santa Fe Railway Company.
Iberia, St. Mary & Eastern Railroad Company.
Illinois Central Railroad Company.
The Kansas City Southern Railway Company.
Leesville, Slagle & Eastern Railway Company.
Louisiana & Arkansas Railway Company.
The Louisiana & North West Railroad Company.
The Mansfield Railway & Transportation Company.
Missouri Pacific Railroad Company.
The Natchez, Urania & Ruston Railway Company.
New Iberia & Northern Railroad Company.

New Orleans & Lower Coast Railroad Company.
New Orleans, Texas & Mexico Railway Company.
North Louisiana & Gulf Railway Company.
The Orange & Northwestern Railroad Company.
Ouachita & Northwestern Railroad Company.
Red River & Gulf Railroad.
The Sibley, Lake Bisteneau & Southern Railway Company.
Southern Pacific Company.
Texas & New Orleans Railroad Company.
The Texas & Pacific Railway Company.
Tremont & Gulf Railway Company.
The Yazoo & Mississippi Valley Railroad Company.

That several of the aforesaid railroad companies upon whose petition the said order was made, namely, Texas & New Orleans Railroad Company, New Iberia & Northern Railroad Company, New Orleans, Texas & Mexico Railway Company, New Orleans & Lower Coast Railroad Company, The Texas & Pacific Railway Company, and The Yazoo & Mississippi Valley Railroad Company, have their Lousiana domiciles in the city of New Orleans, Parish of Orleans, and in the Eastern District of the State of Louisiana.

7

IV

The aforesaid order of the Interstate Commerce Commission is based upon its report and decision dated September 29th, 1932, in the proceeding numbered and entitled, "No. 25135, Increases in Intrastate Freight Rates" (186 I.C.C. 615), which was an investigation instituted by said Commission on the petition of various carriers to determine whether, through the failure or refusal of the railroad rate-regulating authorities of certain States, including the State of Louisiana, to permit increases in freight rates for intrastate traffic corresponding to those which were approved by the Interstate Commerce Commission for interstate traffic in Fifteen Percent Case, 1931 (178 I.C.C. 539, 179 I.C.C. 215), such intrastate rates cause or will cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate commerce on the other hand, or any unjust discrimination against interstate or foreign commerce, and, if so, what rates shall be prescribed to remove such unlawful advantage, preference, prejudice, or discrimination.

A certified copy of the said report and decision of September 29th, 1932, is attached hereto as exhibit A, and made part hereof as fully as if written herein in extenso.

V

The aforesaid investigation was divided by the said commission into several separate parts, one for each State whose rates and charges were brought into question, that part dealing with the rates and

charges of the State of Louisiana being disignated as "Part 5, Louisiana,"

VI

A separate hearing was held as to "Part 5, Louisiana,"
8 at New Orleans, Louisiana, on the 6th to 9th of May, 1932, A.D.

VII

That prior to the institution by the Interstate Commerce Commission of its said investigation as to intrastate rates and charges, the Commission had made and rendered its original report and rendered its decision in Fifteen Percent case, 1931, on October 16th, 1931 (178 I.C.C. 539), in which it found "that a 15 percent increase in all freight rates and charges would increase revenues, if at all, only temporarily and that its ultimate effect, not very long postponed, would be to harm rather than to help the railroads," and also, "that such an increase would raise the rates upon many kinds of traffic above a just and reasonable level." A printed copy of said report as issued by the Commission is attached hereto as Exhibit B, and made part hereof as fully as if written herein in extenso.

As a substitute, the said Commission in its supplemental report in Fifteen Percent case, 1931, supra (179 I.C.C. 215), allowed surcharges to be added to interstate rates and charges, varying from 6 to 12 cents per ton to 2 cents per 100 pounds, and selected a list of commodities, among which were some of the products of agriculture and the facilities of agriculture, upon which no surcharges were allowed. A printed copy of said report as issued by the Commission is attached hereto as exhibit C, and made part hereof as fully as if written herein in extenso.

The Commission in its conclusions in its original report in Fifteen Percent case, 1931, supra, in which the surcharges were allowed on some commodities and denied on others, says:

9 "Upon the evidence, therefore, it is our conclusion that a 15 percent increase in all freight rates and charges would increase revenues, if at all, only temporarily and that its ultimate effect, not very long postponed, would be to harm rather than help the railroads. It is similarly our conclusion that such an increase would raise the rates upon many kinds of traffic above a just and reasonable level. This latter conclusion applies particularly to the products of agriculture, including livestock. We are advised that the committee representing the cooperating State commissions has reached the same conclusions." (178 I.C.C. 576.)

VIII

In accordance with the permission thus granted by the Interstate Commerce Commission, the railroads throughout the United States

published and applied the surcharges allowed by the Commission on interstate traffic and those operating in the State of Louisiana applied to the Louisiana Public Service Commission (hereinafter referred to as the Louisiana Commission) for authority to apply on Louisiana intrastate traffic the same surcharges as had been authorized by the Interstate Commerce Commission on interstate traffic.

IX

In due course, the Louisiana Commission held a public hearing on the said petition, and thereafter made its report and on February 8th, 1932, rendered therein its Order No. 897, which was slightly modified by its Order No. 901, of March 3rd, 1932.

In its said orders the Louisiana Commission authorized the same surcharges on Louisiana intrastate traffic as had been approved in Fifteen Percent case, 1931, supra, on interstate traffic on many commodities; but, following the precedent established by the Interstate Commerce Commission and in the exercise of its authority to regulate and control intrastate rates within the State of Louisiana, exempted from the surcharges thirty-seven commodities, principally the products of agriculture and the facilities of agriculture, and including sand, gravel, crushed stone, and shells and less-than-carload traffic.

X

In refusing to allow the intrastate surcharges on the said list of commodities and on less-than-carload traffic, the Louisiana Commission specified as to each commodity its reasons for so doing, all as is fully shown by the aforesaid report and orders of the Louisiana Commission, certified copies of which are attached hereto as exhibit D and made part hereof as fully as if written herein in extenso.

XI

Following the refusal of the Louisiana Commission to allow the surcharges on the selected list of commodities as aforesaid, many of which moved entirely, or almost entirely, in intrastate commerce, and of which there was no intrastate substantial movement prior to the application of the interstate surcharges, the carriers filed their petition with the Interstate Commerce Commission for an investigation and order under Section 13 of the Interstate Commerce Act, when an investigation was instituted by said Commission under said section of said act, resulting in the report of September 29th, 1932, and the order of November 7th, 1932, as aforesaid.

Plaintiff shows that the said order of the Interstate Commerce Commission dated November 7th, 1932, is illegal, null, void, and of no effect for the following reasons, to-wit:

1. The proceedings before the Interstate Commerce Commission in the Fifteen Percent case, 1931, were general in form, taking on the nature of a preliminary administrative inquiry as to whether certain proposed schedules if filed under section 6 of the Interstate Commerce Act, as amended by the Transportation Act, 1920, should be suspended. In a proceeding of such a character, the reasonableness of interstate rates involved could not be determined. The Commission in said case made it clear that it was not determining the question of reasonableness under section 1 of the Act, and no finding that the rates resulting from the addition of the approved surcharges were just and reasonable was made.

2. No finding is made in the report of the Interstate Commerce Commission of September 29th, 1932, in its Docket No. 25135, Increases in Intrastate Freight Rates, that the interstate rates as increased by the surcharges on the articles on which the Louisiana Commission refused to allow similar surcharges to be applied on intrastate rates within the State of Louisiana, are just and reasonable, and without such finding the Commission has not laid the necessary predicate for an interference with intrastate freight rates and charges not shown to be unjust or unreasonable.

3. The Interstate Commerce Commission did not allow a general increase in all interstate rates, but selected a list of commodities which it exempted from the interstate surcharges, and allowed the advances to go into effect on other commodities, including those exempted by the Louisiana Commisson from intrastate surcharges (except sugarcane which it exempts), without a finding that the particular rates so increased were just and reasonable, which finding is essential before the Commission can disturb intrastate rates in order to remove an alleged undue preference of intrastate shippers or localities and an undue prejudice to interstate commerce.

4. The determination of the reasonableness of the interstate rates on the articles exempted by the Louisiana Commission is a prerequisite to a finding of prejudice arising out of the relationship of interstate and intrastate rates, as they exist under the order of the Louisiana Commission, and as such a finding is missing in the Commission's reports in the cases under review, jurisdiction is lacking in the Commission to strike down the law of the State of Louisiana.

5. The permission granted by the Commission in its reports and decisions in the Fifteen Percent case, 1931, supra, to increase interstate rates by the amount of the surcharges therein specified, including the rates on the articles exempted by the Louisiana Commission, expires by limitation on March 31st, 1933, and there are and can be no findings by the Commission showing what increased revenues, if any, would be received by the carriers operating in the State of Louisiana if the surcharges now approved by the Commission on Louisiana intrastate traffic applied to the articles exempted by the Louisiana Commission.

6. The mere approval of advances in interstate rates on certain commodities by the addition of a surcharge is not the fixing of just and reasonable interstate rates either in themselves or with respect to other rates, and affords no basis upon which the Interstate Commerce Commission can exercise its authority under section 13 (4) of the act, to regulate intrastate rates under any circumstances.

7. The Commission in disposing of the Fifteen Percent case, 1931, supra, did not apply any general rule as to the application of the surcharges to all freight rates and charges, but, on the contrary, it selected certain commodities on which it allowed the interstate surcharges to be applied without suspension, and as to these allowed varying amounts to be added, while as to others it allowed no surcharges, thus taking off of the carriers the burden of justifying the increase in rates, which is the general rule of the Commission.

8. The action of the Louisiana Commission in exempting
13 from the intrastate surcharges the commodities under consideration is in harmony with the action of the Interstate Commerce Commission in canvassing the traffic and determining after consideration of a comprehensive record, what articles moving in intrastate traffic could bear temporary increases in freight rates, and as to what articles so moving, an increase in intrastate freight rates would divert traffic away from the railroads to other modes of transportation and thus cause the revenue of the rail carriers to diminish, or require prompt departure from the rates so increased in order to hold the traffic to the rails or regain that which was lost. Thus the Louisiana Commission, in the rendition of its order which the Interstate Commerce Commission now seeks to set aside, exercised a discretion with which the Interstate Commerce Commission cannot lawfully interfere.

9. The Interstate Commerce Commission failed to issue an order in the Fifteen Percent case, 1931, supra, prescribing reasonable surcharges or fixing and prescribing reasonable maximum interstate rates; but merely approved certain surcharges to be added to the applicable interstate rates on some commodities and refused to allow surcharges to be added to other interstate rates, leaving it optional with the railroads to comply or not comply with the authority granted by the Commission to apply the approved surcharges on interstate traffic. There is, therefore, a lack of definite findings and specific requirements by order of the Commission which are essential to action by the Commission in disturbing intrastate freight rates.

10. There is no finding by the Commission in either the Fifteen Percent case, 1931, supra, or in Docket No. 25135, Increases in Intrastate Freight Rates and Charges, supra, that any of the rates on any of the commodities to which the Commission now seeks to apply surcharges on Louisiana intrastate traffic, are maximum reasonable rates. (186 I.C.C. 619.)

14 11. There is no finding by the Commission as to the revenue which the railroads operating in the State of Louisiana will

receive from the application of the proposed surcharges on Louisiana intrastate traffic during the remainder of the period in which the surcharges on interstate traffic will be applied, which expires March 31st, 1933, and no evidence upon which such a finding could be made. The statement on page 640 of the report in Docket No. 25135, Increases in Intrastate Freight Rates, Part 5, Louisiana, that—

"It is estimated that, based on the traffic of 1931, the application of the surcharges on the excepted commodities would produce additional annual revenue of $26,420 to the Gulf Coast Lines, $53,470 to the Missouri Pacific Railroad Company, $1,848 to the New Orleans & Lower Coast Railroad Company, $108,442 to the Texas & New Orleans Railroad Company, $92,198 to the Texas & Pacific Railway Company, $12,493 to the Kansas City Southern Railway Company, and $101,798 to the Illinois Central. The Louisiana & Arkansas Railway Company would receive $37,911 additional revenue on sand, gravel, and crushed stone. Railroad traffic men expressed the opinion that, notwithstanding possible diversions of traffic to other transportation agencies, the addition of the surcharges to the intrastate rates would produce an increase in revenue,"

is not a finding of fact as to the additional revenues to be expected from Louisiana intrastate traffic in the commodities exempted from surcharges by the Louisiana Commission for the remaining period during which the surcharges would be applied, which expires by limitation March 31st, 1933, and without such a finding the report lacks the bed rock foundation to support an order by the Interstate Commerce Commission prescribing intrastate rates and charges.

12. There is no finding or reference to evidence concerning less-than-carload traffic within the State of Louisiana, or whether the failure of the Louisiana Commission to allow the interstate surcharges to be added to the intrastate rates applying on such traffic causes or will cause any undue preference of intrastate shippers and localities, or undue prejudice to interstate shippers or localities, or unjust discrimination against interstate commerce.

XIII

Plaintiffs further show that unless the aforesaid order of the Interstate Commerce Commission is enjoined the railroads operating within the State of Louisiana will charge, demand, and collect from the State of Louisiana and from shippers in the State of Louisiana surcharges on the commodities which were exempted from surcharges by the Louisiana Commission which are illegal, invalid, null, void, and beyond the power of the Interstate Commerce Commission to prescribe or enforce, and will subject the State of Louisiana, the Louisiana Highway Commission, and other shippers of said commodities within the said State of Louisiana to irreparable injury and require the filing of multifarious suits in order to recover the said illegal surcharges.

XIV

That the various agricultural and other industries affected by the surcharges are in a greatly depressed and in many instances a destitute condition and the addition of the said surcharges will, as shown by the report and order of the Louisiana Commission, cause the traffic in such commodities to leave the rails and seek other and cheaper means of transportation, and thus result in additional loss of revenues to the railroads by the loss of such traffic.

16

XV

Wherefore the plaintiffs pray that the aforesaid order of the Interstate Commerce Commission dated November 7th, 1932, in the proceeding numbered and entitled "Docket No. 25135, Increases in Intrastate Freight Rates, Part 5, Louisiana," insofar as the same prescribes intrastate surcharges for application on Louisiana intrastate freight traffic and authorizes or requires railroads operating within the State of Louisiana to disregard the orders of the Louisiana Public Service Commission exempting specified commodities from the said surcharges as to Louisiana intrastate traffic, be annulled, avoided, and set aside; that the United States of America and the Interstate Commerce Commission and all persons claiming to act or acting under their authority, direction, or control be forever enjoined and restrained from enforcing or attempting in anywise to enforce or put into effect or operation the said order or any portion of the same; and plaintiffs further pray that pending the final hearing hereof the aforesaid order of the Interstate Commerce Commission be stayed and that the United States of America, the Interstate Commerce Commission, and all persons claiming to act or acting under their authority, direction, or control be temporarily restrained or enjoined from enforcing or attempting to in anywise enforce or put into effect or operation the said order, or any portion of the same, issued by the Interstate Commerce Commission November 7th, 1932, establishing and prescribing surcharges for intrastate traffic within the State of Louisiana on the commodities exempted from such surcharges by the Louisiana Public Service Commission.

And plaintiffs further pray that pending final hearing hereof, the said order be stayed and that an interlocutory injunction be
17 granted against the United States of America and the Interstate Commerce Commission, and all of their attorneys, officers, agents, employees, or other persons claiming to act or acting under their authority, direction, or control, enjoining and restraining the enforcement of the aforesaid order.

Plaintiffs further pray that this case be expedited and that the statutory court provided for by law be convened at the earliest convenience of the court, and that this matter be heard by preference and disposed of with as little delay as may suit the convenience of the court.

Plaintiffs further pray for all other and further relief as in equity and good conscience they may be entitled to receive, and that it may please this honorable court to grant unto plaintiffs a subpœna to the United States of America issuing out of and under the seal of this honorable court, directed to the United States of America, and to the Interstate Commerce Commission, commanding that on a certain date therein to be named the United States of America, through the Attorney General of the United States of America, or such other attorney as he may designate, and the Interstate Commerce Commission appear before this honorable court and then and there to answer, but not under oath (answer under oath being hereby specially waived), all and singular the premises; that a copy of this petition be served upon the Interstate Commerce Commission at Washington, D.C., and upon the Attorney General of the United States at the Department of Justice at Washington, D.C., and upon the United States attorney for the Eastern District of Louisiana; and that the United States of America and the Interstate Commerce Commission be commanded to stand to, perform, and abide by any order, direction, or decree as may be made against it in the premises and as it may seem meet and agreeable to equity and good conscience,
18 and these plaintiffs in duty bound so will ever pray.

STATE OF LOUISIANA,
LOUISIANA PUBLIC SERVICE COMMISSION, AND
LOUISIANA HIGHWAY COMMISSION,

(Signed) By GASTON L. PORTERIE,
Attorney General of the State of Louisiana.

(Signed) WYLIE W. BARROW,
Special Assistant to the Attorney General of the State of Louisiana.

(Signed) I. F. WILLIAMS,
Attorney for Louisiana Public Service Commission.

[*Duly sworn to by Francis Williams; jurat omitted in printing.*]

19 *Exhibit A attached to bill of complaint, being copy of Commission's report and order in no. 25135, Increases in Intrastate Freight Rates (186 I.C.C. 615)*

Interstate Commerce Commission.

No. 25135

Increases in intrastate freight rates

Submitted June 30, 1932. Decided September 29, 1932

Intrastate rates on certain class and commodity traffic required by State authority in Arkansas, Idaho, Kentucky, Louisiana, Montana, Nebraska, Oklahoma, Texas, and Utah through failure or

refusal to permit application of surcharges corresponding to those maintained on interstate traffic found to result in unjust discrimination against interstate commerce. Proceeding discontinued as to intrastate rates in Arizona.

M. G. Roberts, A. W. Kendall, E. N. Larson, Harvey Allen, B. P. Souders, Dana T. Smith, Douglas F. Smith, M. L. Countryman, Jr., Conrad Olson, O. H. Timm, E. F. Rice, L. N. Bradshaw, H. B. Cummins, A. MacKenzie, N. L. Callens, W. Hal Farr, J. M. Souby, T. R. Woodrow, J. A. Gallagher, Van Cott, Riter & Farnsworth, H. B. Tooker, W. A. Northcutt, E. D. Mohr, Elmer A. Smith, J. T. Quisenberry, M. Carter Hall, H. G. Fitzpatrick, Frank W. Gwathmey, W. N. McGhee, C. S. Burg, J. N. Davis, J. E. Lyons, Harry McCall, Walter McFarland, C. M. Spence, R. E. Milling, Jr., W. J. Schill, W. H. Malcolm, Arthur E. D'Herete, Joseph Lallande, W. H. Stakelum, C. W. Brosius, Esmond Phelps, J. R. Bell, G. H. Muckley, B. H. Stanage, J. C. Winfield, H. E. Rilley, H. H. Larimore, F. B. Clark, Eldon M. Martin, G. A. Hoffelder, C. C. Weedin, Harry Gillies, and M. A. Rawlings for respondents.

C. B. Bee, Homer L. Dunlap, Jr., and H. L. Bennett for Corporation Commission of Oklahoma; J. M. Thompson, J. D. Rigney, M. Reese Hattabaugh, and Bert L. Penn for Public Utilities Commission of the State of Idaho; Francis A. Silver for Board of Railroad Commissioners of the State of Montana; John F. Bonner for State of Minnesota; John E. Benton and Clyde S. Bailey for National Association of Railroad and Utilities Commissioners; Elbert Hooper, O. D. Hudnall, R. I. Wells, and W. A. Weeks for Railroad Commission of Texas; E. E. Corfman and Thomas E. McKay for Public Utilities Commission of Utah; Orton S. Hogan and L. F. Orr for Kentucky Railroad Commission; Wylie M. Barrow, L. F. Sherer, Francis Williams, and Harry D. Wilson for Louisiana Public Service Commission; P. A. Frye and Wylie M. Barrow for Louisiana Highway Commission and Louisiana shipping interests; Ed. Harper, Reece Caudle, Clay S. Henderson, Robert F. Smith, and A. D. Beals for Arkansas Railroad Commission; and C. A. Sorensen, Hugh Lancaster, and C. A. Ross for Nebraska State Railway Commission.

R. F. Campbell for Missouri State Railway Company; I. G. Bentley for Oklahoma City Chamber of Commerce and Oklahoma City Jobbers & Manufacturers Association; M. H. Champion for Anderson Prichard Oil Corporation, Colorado-Texas Refining Company, and Oil Shippers Committee of Oklahoma; R. E. Stewart for [illegible]nsdall Refiners, Incorporated; P. H. Kuhns and D. L. Gilman for Continental Oil Company; T. H. Riggin for H. F. Wilcox Oil & Gas Company; A. F. Winn and R. D. Pearce for Skelly Oil Company; B. J. Burchett for Deep Rock Oil Corporation; C. F. Dowd for Tidal Refining Company; A. C. Holmes for Empire Oil & Refining Company; Warren Nichols, W. P. Coughlin, and C. A. Butler

for Anaconda Copper Mining Company; R. R. Veldman for J. Neils Lumber Company and Montana Lumber Manufacturers Association; R. H. Paull for Hansen Packing Company; E. E. Williamson, E. H. Smith, and Ewing H. Scott for Newport Rolling Mill Company, Hardy-Burlingham Coal Company, Globe Iron Roofing & Corrugating Company, and Andrews Steel Company; Wilbur LaRoe, Jr., and F. E. Brown for Hansen Packing Company and Southern Kraft Corporation; Benjamin J. Brooks for Southern Kraft Corporation; W. M. Maddox for Magnolia Petroleum Company; H. B. Cole for Taylor Refining Company; Walker Wilson for Cosden Oil Company; F. G. Robinson for Lone Star Gas Company, Lone Star Gasoline Company, and Texas Pacific Coal and Oil Company; Russell G. Lucas and Warren Nichols for Utah Chapter of American Mining Congress; J. S. Earley for Utah Manufacturers Association, Utah Manufacturers Employees League, Utah State Farm Bureau, Utah Poultry Producers Cooperative Association, Utah Horticultural Association, Utah Beekeepers Association, Salt Lake Real Estate Board, Boxelder Chamber of Commerce, Logan Chamber of Commerce, Ogden Chamber of Commerce, Provo Chamber of Commerce, and Utah Shippers Traffic Asociation; H. W. Prickett and M. H. Love for Utah Coal Producers Association and Nephi Plaster & Manufacturing Company; W. H. Lovesy for Utah Oil Refining Company; A. C. Ellis for Columbia Steel Company; W. A. Knight for State Highway Department of Kentucky and various chambers of commerce and shippers' associations; A. G. Linnemann and R. A. Ellison for Kentucky Fire Brick Company and others; L. F. Orr for Bowling Green Business Men's Association and others; J. E. Marks for Lee Clay Products Company; J. W. Hibarger for various shippers; Roy Carson for Harlan County Coal Operators Association and others; H. A. L. Swan for Southern Kraft Corporation;

W. N. Webb for Celotex Company; M. J. McMahon and
21 E. W. McKay for Bogalusa Paper Company and others; Ned A. Stewart for Meriwether Sand & Gravel Company and others; Harry B. Nelson for Louisiana Paving Contractors; Edgar Moulton and C. A. Mitchell for New Orleans Joint Traffic Bureau; Lawrence F. Daspit for Brown Paper Mill Company and others; W. S. Cornell for Shreveport Chamber of Commerce; W. Burgess for Louisiana Division of National Cotton Seed Association; J. M. Wood for Monte & Company, Incorporated; I. Schaffenburg for Bay Chemical Company; J. F. Jordan for Alexandria Chamber of Commerce and others; C. W. Moffett for Monroe Sand & Gravel Company and others; Ben F. Bayha for Newport Industries, Incorporated; Wylie M. Barrow for Nelson Brothers and various road-building contractors in Louisiana; J. E. Gaughan for Southern Kraft Corporation; J. C. Murray for Little Rock Chamber of Commerce, Fort Smith Traffic Bureau, Hodson & Dugger Company, J. H. Hamlin & Sons, W. W. Wilson Stave Company, Balz Cooperage Company, and Wrape Stave Company; M. W. Martin for Newhouse Chemical

& Supply Company, Arkansas Fertilizer Company, Rose City Cotton Oil Company, Temple Cotton Oil Company, and Southern Cotton Oil Company; Mac Martin for Pine Bluff Chamber of Commerce; P. G. Anderson for Lion Oil Refining Company and other refiners in El Dorado, Ark.; Ford Miggard for Owosso Manufacturing Company; Harrison M. Smith for Lincoln Chamber of Commerce; H. D. Bergen for National Stone Company and Ashgrove Lime & Portland Cement Company; Thomas Sullivan for National Stone Company; W. S. Barton for Ashgrove Lime & Portland Cement Company and National Stone Company of Omaha, Nebr.; B. M. Fell for Sioux City Brick & Tile Company, Ballou Brick Company, L. G. Everist, Incorporated, and C. F. Lytle Construction Company; J. A. Little for Nebraska Brick & Tile Association; E. P. Ryan for Nebraska Traffic League, Polenske Brothers, and Schellak & Company of Hastings, Nebr.; M. J. Healy for Washington County Sand & Gravel Company; H. E. Schellberg for Western Limestone Products Company; and George D. Schellberg for Schellberg Sand & Gravel Company.

REPORT OF THE COMMISSION

By the COMMISSION:

This investigation was instituted on petition of various carriers to determine whether, through the failure or refusal of the railroad rate-regulating authorities of certain States to permit increases in freight rates for intrastate traffic corresponding to those which we approved for interstate traffic in Fifteen Percent case, 1931, 178 I.C.C. 539, 179 I.C.C. 215, such intrastate rates cause or will
22 cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate commerce, on the other, or any unjust discrimination against interstate or foreign commerce; and, if so, what rates shall be prescribed to remove such unlawful advantage, preference, prejudice, or discrimination. The investigation is divided into several separate parts, one for each State whose rates and charges are brought into question, and in each instance the State authorities were duly notified in accordance with the provisions of section 13 (3) of the Interstate Commerce Act. Each part is presented on its own separate record and will be considered separately. This report deals with all parts except part 6—Minnesota, part 11—Wisconsin, and part 13—West Virginia, not yet heard. Except as otherwise indicated, rates and increases therein will be stated in amounts per 100 pounds, and rates applicable interstate will be inclusive of the increases approved in the case above cited.

In June 1931 carriers by railroad and by water throughout the country filed with us an application asserting that an emergency existed and seeking authority to make a general increase of 15 percent in their freight rates and charges subject to our jurisdiction. Specifically, they sought special permission to file tariffs providing

for such an increase in blanket supplement form, and a determination by us that those tariffs, when so filed, might become effective without suspension. The proceeding was docketed as Ex parte no. 103, and our decision was reported in Fifteen Percent case, 1931, supra. It was shown that the earnings of the carriers, due to great shrinkage in traffic, were grossly inadequate, that their credit was vitally impaired, and that they were confronted by a serious financial emergency. Nevertheless, upon the voluminous evidence presented, we found "that a 15 percent increase in all freight rates and charges would increase revenues, if at all, only temporarily and that its ultimate effect, not very long postponed, would be to harm rather than help the railroads," and also "that such an increase would raise the rates upon many kinds of traffic above a just and reasonable level." The situation was so serious, however, that we proposed a substitute measure of relief, stating:

"It is motived by the thought that the distrust of railroad securities is rapidly gaining such elements of panic that a slight charge on the industries of the country best able to stand it may justifiably be imposed, through freight rates, for the purpose of increasing confidence and averting developments which might further disturb an already tremendously shaken financial situation, and to avoid impairment of an adequate system of transportation."

The plan was "designed to avoid imposing burdens on industry which cannot reasonably be borne under present conditions, to
23 limit the danger of diversion of traffic to other forms of transportation, and to disturb business conditions as little as possible by preserving, very generally, existing rate relations." The increases were very small, varying from 6 cents per ton to 2 cents per 100 pounds. Some commodities, largely agricultural products, were excluded. The increases were also flat; i.e., the same for hauls of all lengths, except that the total increase in any charge was limited to 10 percent, a limitation which operated only in the case of very short hauls. They were to expire on March 31, 1933, unless the time was extended.

As a further feature of the plan we stated that we would rely upon the carriers, in accordance with their agreement, to marshal the revenues accruing from the increases and thus create a fund for making loans to carriers which failed to earn their fixed charges. The carriers have justified this reliance. They are collecting and disbursing the fund through the Railroad Credit Corporation, an agency specially constituted for this purpose. On the basis of the traffic of 1931, intrastate as well as interstate, we estimated that the increases would yield from $100,000,000 to $125,000,000 per year; but, due to a further sharp fall in traffic, the indications are that a much smaller sum will be realized in 1932. In the instant proceeding the president of the Railroad Credit Corporation testified that the fund is likely to fall $40,000,000 short of meeting the fixed-charge needs for which it was created.

We stated that we would grant the necessary authority under section 6 to permit the filing of blanket supplements providing for the increases which we proposed, and that they would be permitted to take effect without suspension—

"subject to the proviso that we shall reserve discretion to require minor changes in the details thereof; and that the resulting rates will in all respects be subject to investigation and determination as to the lawfulness of particular rates or schedules of rates, as provided by the act."

There was no finding that each and every rate so increased would be a maximum reasonable rate, because a finding on this point was both impracticable and unnecessary. We did, however, state:

"The freight articles selected by us in this connection were those for the transportation of which we believed the rates could be somewhat increased without causing the traffic to be transferred to other agencies of transportation and without bringing about an undue disturbance in business conditions or transgressing the bounds of maximum reasonable rates."

This selection was made in the light of detailed evidence of record in regard to the various commodities and the conditions surrounding their transportation, including the competition of other agencies of transportation. There was no requirement, however, that the rates so increased should be maintained as minimum rates, and the
24 carriers were left free to reduce them, if experience should show that more traffic and revenue could be obtained by a reduction.

In the administration of the Interstate Commerce Act a definite class of cases has come to be recognized where the paramount question is the general level of rates throughout the country or in territorial parts thereof, i.e., whether the aggregate revenues of the carriers shall be increased or reduced by a change in this general level. These are known as general-revenue cases. For reasons which are apparent, it is impracticable in such proceedings to consider individual rates. It is necessary to deal with rates in the aggregate or by broad classes, and the rights of shippers and carriers with respect to individual rates are protected by a saving clause which makes the general findings without prejudice to subsequent findings in individual situations. The Supreme Court has recognized the practical necessity of dealing with the general rate level in this way. For example, in New England Divisions case, 261 U.S. 184, at pages 197–198, the court referred with approval to the following passage from our report in New England Divisions, 66 I.C.C. 196, 203:

"In all such general rate cases we have realized and have held that if we were required to consider the justness and reasonableness of each individual rate, the law would in effect be nullified and the commission reduced to a state of administrative paralysis."

Increased Rates, 1920, 58 I.C.C. 220, and Reduced Rates, 1922, 68 I.C.C. 676, were both general-revenue cases. In describing our findings therein, the court said, in Brimstone R.R. Co. v. United States, 276 U.S. 104, 123:

"Neither case approved 'any specific rate as reasonable in itself or as properly adjusted with respect to other rates nor did it justify in advance any rate which might be published as a result thereof.' In them the Commission was dealing with the whole body of rates throughout the country—was looking at the general level of all rates, and the propriety of the rates to which the Brimstone Company was party was not the subject of particular investigation or consideration."

Ex parte No. 103 also was a general-revenue case, and it dealt in the aggregate with broad classes of rates throughout the entire country. It approved general increases of those classes without consideration of individual rates, and protected the rights of shippers and carriers with respect to such rates by the saving clause, already quoted, that the "resulting rates will in all respects be subject to investigation and determination as to the lawfulness of particular rates or schedules of rates, as provided by the act." Revenue considerations affecting the operations of the carriers in their entirety, both intrastate and interstate, were paramount in the findings, and the existing rates to which it was contemplated that the increases would be applied were the result of a comprehensive system of public regulation which had been in force, in both the Nation and the States, for many years.

The plan of augmenting the revenues of the carriers which was adopted was framed in the light of the conditions disclosed of record and in the hope that it would help the general financial situation with benefit to all concerned, and it sought to produce the maximum effect of this character consistent with the imposition of minimum burdens upon distressed industry and minimum disturbance of business conditions. To this end it appealed to a spirit of cooperation on the part of both shippers and carriers. It was so received, very generally. The increases, which have come to be known as surcharges and will be so termed hereinafter, became uniformly effective interstate on January 4, 1932, and in general have since been maintained. In a spirit of cooperation the State commissions also permitted them to become quite generally effective intrastate. We are dealing in the instant proceeding with certain of the comparatively few exceptions where the surcharges were not permitted to become effective intrastate.

We have gone into this description of Ex parte No. 103 with some particularity because the character of the proceeding and of the action there taken is a matter of essential importance in the determination of the issues now before us.

Prior to the Transportation Act, 1920, we had authority over intrastate rates for the protection of interstate commerce, only under section 3 of the act to regulate commerce. As a prerequisite to the

exercise of such authority, therefore, it was necessary to find that the intrastate rates were causing undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand. In 1920, however, by what is now paragraph (4) of section 13 of the Interstate Commerce Act, our authority was enlarged to permit us to regulate intrastate rates, not only under the circumstances above described, but also if it were found that they were causing "any undue, unreasonable, or unjust discrimination against interstate or foreign commerce."; and such discrimination was "forbidden and declared to be unlawful."

In Wisconsin R.R. Comm. v. C., B. & Q. R.R. Co., 257 U.S. 563, this new provision was interpreted. Pointing out that the new section 15a had imposed on us an affirmative duty "to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States," that intrastate rates and the income from them must play a most important part in attaining this end, and that the "effective operation of the act will reasonably and justly require that intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system," the court said, at page 586:

26

"When we turn to paragraph 4, section 13, however, and find the Commission for the first time vested with a direct power to remove 'any undue, unreasonable, or unjust discrimination against interstate or foreign commerce,' it is impossible to escape the dovetail relation between that provision and the purpose of section 15a. If that purpose is interfered with by a disparity of intrastate rates, the Commission is authorized to send the disparity by directly removing it, because it is plainly an 'undue, unreasonable, or unjust discrimination against interstate or foreign commerce,' within the ordinary meaning of those words."

This conclusion was further elucidated by the court, at pages 589–590, where it said:

"Congress in its control of its interstate commerce system is seeking in the Transportation Act to make the system adequate to the needs of the country by securing for it a reasonable compensatory return for all the work it does. The States are seeking to use that same system for intrastate traffic. That entails large duties and expenditures on the interstate commerce system which may burden it unless compensation is received for the intrastate business reasonably proportionate to that for the interstate business. Congress as the dominant controller of interstate commerce may, therefore, restrain undue limitation of the earning power of the interstate commerce system in doing State work."

It is therefore clear that we have authority over intrastate rates for the purpose of protecting the general revenues of the carriers needed in the maintenance of an adequate national railway system, and wherever necessary "to restrain undue limitation of the earning power of the interstate commerce system in doing State work."

...478, the court ... striking language: ... system of railways ... traffic of the country. ... opportunity to earn ... in such a state of ... To achieve this great ... more completely ... the fostering guardianship and control of the Commission, which is to supervise their issue of securities, their car supply and distribution, their joint use of terminals, their construction of new lines, their abandonment of old lines, and by a proper division of joint rates, and by fixing adequate rates for interstate commerce, and in case of discrimination, for intrastate commerce, to secure a fair return upon the properties of the carriers engaged."

It is plain that in the exercise of our authority over intrastate rates which was conferred by the Transportation Act, 1920, and in the determination of the extent of and limitations upon that authority, the "great purpose" of that act, as described by the court, is a paramount consideration to be kept ever in view. With it in
27 view, then, we proceed to the discussion of three matters which have assumed prime importance in the present proceeding.

1. In Wisconsin R.R. Comm. v. C., B. & Q. R.R. Co., 257 U.S. 563, the court said that if the purpose of section 15a is interfered with by a "disparity of intrastate rates," we are authorized "to end the disparity by directly removing it." What is such a "disparity of intrastate rates" and when may it be found to exist? The question is a simple one in the case of rates which have been adjusted in relation to a uniform distance scale applicable both interstate and intrastate. In such instances, of which there are a considerable number in this proceeding, an increase in interstate rates unaccompanied by a corresponding increase in intrastate rates plainly creates a disparity in the latter rates. The question is not so simple, however, where, as is often the case, the rates are not so made but, by reason of competitive or commercial conditions, are characterized by large groups or blankets or depart in other respects from distance uniformity. In such situations it is normally possible to show that certain intrastate rates are higher, mile for mile, than corresponding interstate rates, that the reverse is true in other instances, and that there are like differences between various interstate rates and also between various intrastate rates. When may a "disparity in intrastate rates" be found to exist under these latter conditions?

The answer to this question must be influenced, we believe, by the character of the proceeding. In a general-revenue case, as we have seen, it is wholly impracticable to consider individual rates, but the rights of interested parties with respect thereto are protected by a saving clause. Where an increase in the general level of rates, however, is required to sustain a railroad system "adequate to the needs of the country," to use the words of the court, it is manifest that the

"great purpose" of the act can not be accomplished unless intrastate rates are dealt with in the same way as interstate rates. In Increased Rates, 1920, supra, we did not, as the court has pointed out, approve "any specific rate as reasonable in itself or as properly adjusted with respect to other rates," nor did we "justify in advance any rate which might be published as a result thereof." Nevertheless, our orders requiring increases in certain intrastate fares corresponding to those which were approved for interstate fares in that case were sustained in Wisconsin R.R. Comm. v. C., B. & Q. R.R. Co., supra, and in New York v. United States, 257 U.S. 591; and numerous other orders affecting both intrastate rates and fares became effective without contest following those decisions.

Like the findings in Increased Rates, 1920, supra, the findings in the intrastate rate cases which followed it contained a saving
28 clause. Using Wisconsin Passenger Fares, 59 I.C.C. 391, 397, as an illustration, this clause was as follows:

"These findings are without prejudice to the right of the authorities of the State of Wisconsin or of any other party in interest to apply in the proper manner for a modification of our findings and order as to any specified intrastate fares or charges on the ground that the latter are not related to the interstate fares or charges in such a way as to contravene the provisions of the interstate commerce act."

This saving clause was referred to with approval in Wisconsin R.R. Comm. v. C., B. & Q. R.R. Co., supra, at page 579, the court stating:

"Any rule which would require specific proof of discrimination as to each fare or rate and its effect would completely block the remedial purpose of the statute."

The distinction between a general-revenue case and one where particular rates are involved was also recognized in Florida v. United States, 282 U.S. 194, at page 212.

The present investigation is the outgrowth of a general-revenue case in which we considered the revenue needs of the carriers in their entirety, without distinction between interstate and intrastate traffic. All that the petitioning carriers are here seeking is an opportunity to apply the same surcharges on certain intrastate traffic as have already been applied and are in effect on corresonding interstate traffic, and also on much corresponding intrastate traffic. Whatever relationships existed between the intrastate and the interstate rates prior to the increase in the latter will be restored, if this opportunity is granted, and until it is granted they are disrupted. Under such circumstances, and keeping in view the great remedial purpose of the 1920 legislation, the nonapplication of the surcharges intrastate creates, in our opinion, a "disparity in intrastate rates" within the meaning of the court in the Wisconsin case. Any order requiring the removal of such a disparity should, of course, be accompanied by a saving clause like that which was approved in that case.

2. In Georgia Comm. v. United States, 283 U.S. 765, 770, the court said:

"It is true that when State rates are assailed on the ground that they result in undue prejudice to interstate shippers or discrimination against interstate commerce, the Commission must determine whether the existing interstate rates are reasonable, as it may not require intrastate rates to be raised above a reasonable level. State Corporation Comm. v. Aberdeen & Rockfish R. Co., 136 I.C.C. 173." State commissions and shippers strongly urge that in Fifteen Percent Case, 1931, supra, we made no finding that the resulting rates would be reasonable, and hence that there is here no basis for requiring the intrastate rates to be raised. As before indicated, we made no finding that each and every rate would be reasonable, because such a finding was both impracticable and unnecessary. We did
29 state that the freight articles selected for the application of the surcharges "were those for the transportation of which we believed the rates could be somewhat increased without * * * transgressing the bounds of maximum reasonable rates."

The important thing is the principle underlying the statement above quoted from the Georgia case. The particular words which were used are to be considered in the light of the circumstances which then confronted the court. The Georgia case did not emanate from a general-revenue case and dealt chiefly with "undue prejudice and discrimination to interstate shippers and localities", as is made clear by the comments on page 773 of the court's opinion. When a "disparity of intrastate rates" is found to exist, the question is whether it is just and right that this disparity should be corrected by requiring an increase in State rates. Obviously this should not be done unless the fault lies in those rates. If the fault is in the interstate rates, it is they which should be changed. Where specific rates are in issue and no general increase in the level of rates to meet revenue needs is involved, plainly the fault is to be located by applying the yardstick of interstate rates definitely found to be reasonable. Where the disparity is the outgrowth of a general-revenue case in which rates were dealt with in the aggregate or by general classes, the fault cannot be so located. Nevertheless it is possible to apply the same test to the intrastate rates as was applied to the interstate rates, and this is, we believe, the essential principle to be followed. To do otherwise would, as the court suggested in the Wisconsin case, "completely block the remedial purpose of the statute." Manifestly both classes of rates must be dealt with in the same way, and subject to similar reservations protecting the future, if the transportation needs of the country are to be met, to say nothing of the extraordinary conditions and the serious financial emergency by which we were confronted in Ex parte no. 103.

3. In Wisconsin R.R. Comm. v. C., B. & Q. R.R. Co., supra, the court said, at page 591:

"It may well turn out that the effect of a general order in increasing all rates, like the one at bar, will, in particular localities, reduce income instead of increasing it, by discouraging patronage. Such cases would be within the saving clause of the order herein and

make proper an application to the Interstate Commerce Commission for an appropriate exception."

Likewise, in Florida v. United States, supra, the court said, at page 214:

"In considering the authority of the Commission to enter the State field and to change a scale of intrastate rates in the interest of the carrier's revenue, the question is that of relation of rates to income. It may in particular localities reduce revenue instead of increasing it, by discouraging patronage."

And again, at pages 214–215:

30 "The Commission made no findings as to the revenue which had been derived by the carrier from the traffic in question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service."

A finding as to the future revenue effect of increased rates is not, strictly speaking, a finding of fact but a prediction. The evidence may be such that a prediction may be made with reasonable assurance of accuracy, and in such instances it sufficiently approximates a fact so that a finding is justified. In other instances the result may be wholly problematical, and no definite finding can be justified. We have never felt that we ought to forbid a proposed increase in rates on the sole ground that we are unable to find that it will accomplish its purpose, where the outcome is plainly a mere matter of judgment. The decision of such questions of judgment is a responsibility of management, and we are not the managers of the railroads.

In Ex parte no. 103, voluminous evidence in regard to the probable revenue result of the proposed 15 percent increase in rates was presented by shippers and little or none by the railroads. In view of competitive conditions, the trend of commodity prices, and other factors, we were convinced that such an increase would in the end hurt rather than help the earnings of the carriers, and hence disapproved it. We were not persuaded that the much smaller surcharges, which we finally approved, would have a similar result. The evidence did not justify a definite finding on this point, and we left the application of these surcharges to the judgment of the managements. If the results were unfavorable, the managements were also left free to eliminate the surcharges or reduce the rates still further. A similar policy should, we believe, be followed in this proceeding.

In the Florida case, which dealt with specific rates and was not the outgrowth of any general-revenue case, the Supreme Court held that before requiring an increase in the intrastate rates, it was necessary for us to find that the increase "would produce, or was likely to produce, additional income." It is significant that it did not so hold in the Wisconsin case, which did emanate from the general-

revenue case. Stating that the effect of a general order increasing all rates, like the one at bar, might, in particular localities, "reduce income instead of increasing it," it said that such cases would be "within the saving clause of the order," and make proper an application to the Commission for an appropriate exception. In other words, the results were to be governed by experience rather than prediction.

While we have indicated our general conclusions upon these three controverted points, they will not here be applied in any rigid
31 way and we shall take into consideration the special circumstances and conditions, if any, which surround each case and which are disclosed of record.

Before proceeding to the consideration of the evidence submitted in each of the separate parts of the proceeding, certain other general observations are desirable. No reason appeared in Ex parte No. 103 for adjusting the surcharges to differing transportation conditions in different parts of the country. There is, therefore, no occasion in this proceeding for considering similar differences in transportation conditions between State and interstate traffic. While the evidence before us would in many instances justify findings of undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, this evidence is more or less fragmentary, and we shall therefore confine our findings to the matter of unjust discrimination against interstate commerce. Where we make such a finding and require an increase in the intrastate rates, it is to be understood that we conclude that no positive finding in regard to the revenue outcome of the increase can be justified. Every finding of unjust discrimination will be accompanied by a saving clause, such as was approved by the Supreme Court in the Wisconsin case, and we shall require the surcharges to be applied on the intrastate traffic only so long as they are contemporaneously maintained on corresponding interstate traffic.

Part 1—Arizona

The Arizona Corporation Commission granted the carriers' application, except that it did not permit any surcharges on cottonseed meal and cake, copper ore and concentrates, lead ore and concentrates, ore and concentrates, n.o.s., and fluxing stone, in carloads. Although the Arizona carriers originally joined in the general petition for this investigation, they are apparently willing to accept the State commission's viewpoint. Upon their request the hearing in this part of the case was canceled. The proceeding, insofar as it relates to Arizona, will accordingly be discontinued. We assume that these carriers will cancel the surcharges on corresponding interstate traffic moving under like conditions.

Part 2—Arkansas

The Arkansas Railroad Commission denied the carriers authority to apply the surcharges on the following commodities: (1) Furniture; (2) refined petroleum products under consideration in no. 17000, part 4-A; (3) rough material as described in respondents' lumber tariffs, when moving to plants for manufacturing purposes;
32 (4) pulpwood, heading bolts, and staves; (5) superphosphates or ammoniated superphosphate; and (6) fertilizer and fertilizer materials.

In the supplemental report in Fifteen Percent case, 1931, 179 I.C.C. 215, 240, it was stated that—

"3. Shipments of petroleum products and furniture, moving under rates the same as or less than those prescribed or approved in no. 17000, parts 4, 4-A, and 5, shall not be subject to any surcharge under these findings on and after the dates when the rates covered by said findings become effective."

The revision of rates on furniture pursuant to no. 17000, part 5, Furniture, 177 I.C.C. 5, became effective February 25, 1932. However, respondents continued in effect thereafter, for what they said would be a comparatively short period, all commodity rates lower than those prescribed. Respondents here seek to apply a surcharge of 2 cents on furniture in Arkansas pending further revision of furniture rates. But today the interstate furniture rates are the same as or less than those prescribed or approved in the case above cited, and include no surcharge. Therefore there is now no ground for requiring the application of a surcharge intrastate within Arkansas.

For interstate rates on petroleum we approved a surcharge of 1 cent, to expire upon the effective date of the rates prescribed in no. 17000, part 4-A, Refined Petroleum Products in the Southwest, 171 I.C.C. 381. Rates prescribed in that case were published from Arkansas origins to Texas destinations effective December 15, 1931, but the adjustment in other respects was postponed until August 10, 1932. It became effective on that date. Therefore no occasion now exists for requiring the application of the surcharge in Arkansas.

On rough lumber, heading bolts, and stave bolts moving into plants which manufacture and ship such commodities as lumber, staves, or other articles taking the lumber rates or rates based thereon, the Arkansas Commission denied authority to the carriers to apply any surcharge. The surcharge authorized by us on lumber, heading bolts, and stave bolts is 12 cents per ton. Similar plants are located in all of the Southwestern States bordering Arkansas. The State commissions of Missouri, Oklahoma, and Texas permitted the surcharge within those States on stave bolts. The total movement of the rough material in Arkansas for a representative year was 135,533 tons, on

which the carriers estimate the surcharge would have yielded $16,263.96.[1]

33 We provided that where shipments are accorded transist on basis of a through transportation rate, there should be only one surcharge for the through movement. The surcharge traffic applicable on interstate traffic provides:

"Where freight is accorded a transit privilege under tariffs which provide for the computation of transportation charges on a different basis into and out of the transit point (such as proportional rates to and/or from the transit point), the emergency charge shall be either that accruing for the movement into the transit point or that accruing for the movement beyond the transit point, whichever is higher."

On interstate traffic, therefore, there is now only one surcharge on rough lumber, heading bolts, or stave bolts into points of manufacture and moved outbound in the form of lumber or staves. The Arkansas Commission has not denied authority to the carriers to apply the surcharge on rough lumber, heading bolts, or stave bolts when moving in local commerce independent of any outbound movement of the manufactured commodity. It appears that in no case would the surcharge on rough lumber, heading bolts, or stave bolts be higher than the surcharge on the finished material shipped out of the manufacturing point. Consequently, what the Arkansas Commission has done appears in effect not to be different from what has been done with respect to interstate traffic. There is, therefore, no occasion for requiring any further application of the surcharge on this intrastate traffic.

On pulpwood we approved a surcharge of 6 cents per ton. This commodity within Arkansas move principally to paper mill at Camden. The movement within the State for a period of a year amounted to 91,690 tons, on which the surcharge would have yielded $5,501.40. It is not shown that there is an interstate movement of this commodity to or from Arkansas. A representative of the State Commission testified that the evidence before it led the Commission to believe that if the surcharge were added to the rates on pulpwood, the paper mill at Camden would divert the movement to trucks, and draw its supply of pulpwood from a tract of lumber within a few miles of its plant.

On superphosphate the State Commission initially permitted the carriers to apply the surcharge of 1 cent. Later, upon formal complaint, it prescribed certain intrastate rates on superphosphate and ammoniated superphosphate for application from Little Rock and Texarkana, Ark., which are relatively lower than those authorized on

[1] The surcharges which we approved were subject in all instances to the limitation that "In no event shall the increase levied on any shipment be in excess of 10 percent of the charges which would be assessed in the absence of the increase." In their computations of increased revenue which would result from application of the surcharge the carriers were unable to give effect to this limitation.

interstate traffic. These commodities are also manufactured at Memphis, Tenn., and shipped to Little Rock, Hope, and Texarkana, Ark. Another manufacturer in East St. Louis, Ill., ships to various points in the Southwest, including Arkansas. The surcharge is applicable on these commodities throughout the Southwest, except within Arkansas and Louisiana.

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On fertilizer and fertilizer materials we authorized a surcharge of 1 cent, but the State Commission denied application of this surcharge intrastate.

Respondents' witness testified that the application of the surcharges on all of the traffic under consideration would in his judgment result in increased revenues to the carriers. The Arkansas Commission objected to any evidence relating to increased revenues which might result from the surcharges, on the ground that the scope of investigation is not sufficient broad. The objection was not well founded.

We find that, in view of the surcharges which have become effective interstate in the freight rates on the commodities here in question, under our findings in Fifteen Percent case, 1931, supra, respondents' intrastate rates in Arkansas on these same commodities, to which no corresponding surcharges have been added, have resulted and will result in unjust discrimination against interstate commerce, except in the case of the intrastate rates on furniture, refined petroleum products, rough lumber, heading bolts, and stave bolts. We further find that this unjust discrimination shall be removed by applying to the present intrastate rates in Arkansas on said commodities, except those specified above, the same surcharges as are and for the future may be contemporaneously maintained by respondents, in accordance with the findings in Fifteen Percent case, 1931, supra, on corresponding interstate traffic.

These findings are without prejudice to the right of the authorities of the State of Arkansas or of any other party in interest to apply in the proper manner for a modification of our findings, and order if one is issued, as to any specified intrastate rate on the ground that the latter is not related to intrastate rates in such a way as to contravene the provisions of the Interstate Commerce Act.

Part 3—Idaho

The Public Utilities Commission of Idaho denied application of the surcharges on the commodities, in carloads, named in the following table. The table also shows data offered by the principal Idaho carriers as to the volume of movement in 1931, together with the estimated amount of yearly revenue loss, $22,610.58, resulting from inability to apply the surcharges. The State Commission likewise exempted dried beans and peas, agricultural implements, and poultry, in less than carloads, but the volume of such movement is small.

35

Commodity [1]	Idaho [2] intrastate movement in 1931	Revenue [3] loss
	Tons	
Bituminous coal	110	$6.20
Lead ore and concentrates	269,064	6,375.54
Zinc ore and concentrates	1,846	110.76
Ore and concentrates, n.o.s.	1,166	69.77
Gravel and sand (other than glass or moulding)	13,546	811.64
Stone, broken, ground, or crushed; coated sand; and coated rock building material	192	9.49
Phosphate rock, crude (ground or not ground)	160	19.20
Posts, poles, and piling	15,145	1,787.39
Lumber	49,300	5,261.99
Box, crate, and cooperage materials	608	72.96
Alfalfa seed	264	52.80
Beet pulp or residue	26,052	5,210.40
Clover seed	64	12.80
Fuel, road, and petroleum residual oils	495	92.84
Cement, natural or Portland (building)	10,312	2,062.40
Brick, common	2,728	534.20
Brick, n.o.s., and building tile	64	11.00
Lime, common (quick or slaked)	20	4.00
Feed, animal or poultry	528	105.60
Total	391,664	22,610.58

[1] The Idaho commission also denied application of the surcharges on wool, copper ore and concentrates, lath and shingles, grass seed, and crude petroleum, but no intrastate movement of these commodities in 1931 was shown by the carriers.

[2] The figures for the Oregon Short Line Railroad Company were based on actual movements for April, July, and November 1931 and those for the Great Northern Railway Company on movements for January and October 1931, equated to a year basis. The figures for other carriers are for the year 1931.

[3] The surcharges are, on coal, ore, gravel and sand, and stone, 6 cents per ton; on phosphate rock and the timber products shown, 12 cents per ton; and on the remaining commodities, 1 cent per 100 pounds.

To illustrate further the effect of the State commission's action, respondents compare the intrastate rates on many of the above commodities from and to certain Idaho points with interstate rates thereon between Idaho points and points in adjacent States for hauls of similar length. Where the intrastate and interstate rates are based on the same scale, the intrastate rates are, of course, the lower by the amount of the surcharge, but such scales generally apply only on sporadic or exceptional movements. The rates which move most of the traffic are specific commodity rates not based on a scale. Respondents' comparisons show the intrastate rates to be generally somewhat lower, relatively, than the interstate rates. They are alleged to be representative, but respondents offered practically no evidence as to actual traffic movement.

Similar comparisons leading to a different conclusion were offered by the State commission. They show intrastate rates which are relatively higher than corresponding interstate rates. It is contended that these comparisons reflect actual movements more nearly and in other respects are more representative than respondents'. They are at least more voluminous and comprehensive.

The situation is quite evidently one of the general type, hereinbefore discussed, where rates are not based on a uniform distance scale, and hence discrepancies in rates for hauls of similar length may readily be found.

36

Among the principal commodities excepted by the State commission are mine products. The lead and zinc mining and smelting industry in Shoshone County, in northern Idaho, is in serious condition. Ores are now of little value, as the prices of metals are very low. Plants are producing about half their former volume. They are generally operating at a loss. Operations are being continued mainly for the purpose of holding organizations together and avoiding distress among employees, but it is said that this cannot go on very much longer if present conditions do not improve.

The surcharges are sought by respondents on ore from the mines into the mills and on concentrates from the mills into the smelters. They already apply on interstate movements of the metals to market.

A mill at Gem, Idaho, ships ore concentrates to Bradley, Idaho, 16 miles, for smelting and refining over a line of the Union Pacific system. Prior to January 7, 1932, it paid rates of $1.02 and 68 cents per ton, dependent upon value, but since then the rate has been 45 cents regardless of value. The reduction was the result of truck competition. Because of this competition the shipper refused a 50-cent rate offered by the Union Pacific, but finally agreed to accept a 45-cent rate and continue its shipments by rail. The surcharge would make the rate 49.5 cents. It is said that there are other like cases.

There is a small commercial coal mine at Talbot, Idaho, southwest of Yellowstone National Park. It has never yielded profit. Operating expenses are high because the veins are pitched from 45 to 90 degrees. The property has just come out of receivership, after having been shut down for several years. It has recently been shipping about two cars per week, but later in the year it is hoped that it may ship several cars per day. Its principal market is in the Blackfoot country north of Pocatello, Idaho, in the upper Snake River Valley, but it ships slack coal to points farther south and west. Its rate to Idaho Falls, Idaho, is $1.65 on lump and nut and $1.45 on slack coal. The surcharge of 6 cents would add to the troubles of this mine. It has difficulty in meeting competition from Wyoming and Utah, although its rates are lower by 40 cents per ton to the destinations to which it generally ships than are its competitors'. The interstate rates of the latter have been increased by the surcharge. Competition is also met from fuel wood, on which we permitted no increase. Competition with natural gas is said to be in the offing.

The State commission permitted no increases on products of the forest on which we approved surcharges. One of the principal Idaho lumber producers, which has operated in the red since 1924, objects to any increased burden and urges that the surcharges would aggravate the present disastrous situation. This protestant during the first four months of this year paid $13,000 in interstate surcharges.

37

The Pacific & Idaho Northern Railway Company, a class II carrier operating about 90 miles of line between Weiser and New

Meadows, Idaho, did not join the other Idaho carriers in seeking increases before the State commission, and we do not understand that it seeks any here. The Idaho Commission moved at the hearing that this part of the case be discontinued, on the ground that respondents' evidence was not sufficient to satisfy the requirements of section 13 of the Interstate Commerce Act.

There is nothing of record which warrants the conclusion that the situation as to coal, forest products, or other commodities in Idaho except ores and concentrates, is different from that which exists in other parts of the country or in surrounding States where surcharges are now being assessed. Similar allegations with respect to the inability of certain commodities to stand any increased charges were made in Ex parte No. 103 and were considered in reaching our conclusions.

We find that in view of the surcharges which have become effective interstate in the freight rates on the commodities here in question, under our findings in Fifteen Percent case, 1931, supra, respondents' intrastate rates in Idaho on these same commodities, to which no corresponding surcharges have been added, have resulted and will result in unjust discrimination against interstate commerce, except in the case of the intrastate rates on ores and concentrates. We further find that this unjust discrimination shall be removed by applying to the present intrastate rates in Idaho on said commodities, except ores and concentrates, the same surcharges as are and for the future may be contemporaneously maintained by respondents, in accordance with the findings in Fifteen Percent case, 1931, supra, on corresponding interstate traffic.

These findings are without prejudice to the right of the authorities of the State of Idaho or of any other party in interest to apply in the proper manner for a modification of our findings, and order if one is issued, as to any specified intrastate rate on the ground that the latter is not related to interstate rates in such a way as to contravene the provisions of the Interstate Commerce Act.

Ores and concentrates have been omitted from this finding because it appears that they move in this western territory largely for short distances and largely intrastate, and that the condition of the industry and competitive transportation conditions are such that it is improbable that respondents would profit from the increase.

38 We are fortified in this conclusion by the fact that the Arizona carriers have seen fit to abandon any attempt, with the help of our jurisdiction, to apply the surcharge to the rates on ores and concentrates within that State. The industry in western territory is broadly competitive, and the traffic ought not to be subject to increases in one State which are abandoned by the carriers in another. It is assumed that the carriers will withdraw any surcharges which they may now levy on traffic in ores and concentrates moving interstate, or intrastate in other States.

Part 4—Kentucky

The Kentucky Railroad Commission denied application of the surcharges in their entirety.

The class rates applicable between points in Kentucky, with certain exceptions, are the distance-scale rates which we prescribed on interstate traffic within the South in the southern class-rate revision. Rates from and to south-bank Ohio River cities are the same as those applicable from cities on the opposite bank and reflect the interterritorial basis then prescribed. Rates between points in official territory and border points in Kentucky, which are on the distance-scale basis prescribed in the eastern class-rate revision, apply over routes through Kentucky and often are observed as maxima for intermediate intrastate hauls. There are a few so-called lettered class rates in effect in Kentucky, but these are in reality commodity rates. Rates on the line of the Chesapeake & Ohio Railway Company in Kentucky to and from Cincinnati are the distance-scale rates prescribed for central territory in the eastern class-rate revision.

The intrastate rates in Kentucky and the revenue therefrom, along with the intrastate rates and revenue in all other Southern States, were considered in the determination of a proper class-rate level throughout southern territory. There are intrastate rates on more than 125 different commodities which are the same percentages of the first-class rates as apply on the respective commodities for interstate hauls. The surcharges have been added to all interstate class rates, as well as to the class rates applicable intrastate in surrounding States. It was testified that there is a heavy movement of class-rate traffic within Kentucky and between Kentucky and other States, and defendants assert that the refusal to permit the surcharges intrastate results in direct and positive discrimination against interstate traffic and in favor of Kentucky intrastate traffic.

Shippers point out that the interterritorial class rates prescribed in the southern class-rate revision between southern and central territories, and the intrastate class rates applicable in Indiana, are generally lower, with the surcharges added, than the distance-scale
39 rates applicable in Kentucky without the surcharges. They also offered evidence tending to show that class-rate levels in various States, particularly north of the Ohio River, are lower than in Kentucky, although the traffic density in such States is less than in Kentucky. Evidence of much the same character has been presented in No. 21373, Commonwealth of Kentucky v. Ahnapee & W. Ry. Co., now pending, involving rates to and from Kentucky, from and to official and western trunk-line territories, and will be dealt with there. The present class rates in Kentucky are in harmony with our previous decisions.

The interstate and intrastate rates on brick from and to points in Kentucky are on the basis prescribed in Brick and Clay Products in the South, 88 I.C.C. 543, 155 I.C.C. 730. The surcharge of 1 cent has been added to the interstate rates. This commodity is manufac-

tured at numerous points in Kentucky and is sold at Kentucky destinations in competition with brick manufactured at various interstate points, particularly Nashville, Tenn., and Evansville, Ind.

Certain manufacturers of fire brick and clay products in Kentucky do not oppose the uniform application of the surcharges on intrastate and interstate traffic, but ask that crude fire clay be subjected to a surcharge of not more than 6 cents a net ton. They contend that it is of no greater value than in any of the articles on which we have authorized a surcharge of 6 cents a ton. This is probably true, but it is also true that the surcharge of 12 cents a net ton on fire clay of any description, which we approved, is the same as that which we approved on the following comparatively low-grade commodities. Rough stone, shale, cobble stones, charcoal, and scrap iron. Upon consideration of an informal petition from fire-clay interests for reduction of the interstate surcharge on crude fire clay to 6 cents a ton, we declined to make any change.

Cement which is manufactured at Kosmosdale, Ky., about 18 miles west of Louisville, Ky., is sold at points in Kentucky in competition with cement manufactured at Speeds and Mitchell, Ind., Osborne, Ironton, and Superior, Ohio, Marquette, Mo., and Nashville and Chattanooga, Tenn. The interstate and intrastate rates on cement from and to points in Kentucky, except from points in official territory to south-bank Ohio River crossings, are distance-scale rates prescribed in Southern Cement Rates, 132 I.C.C. 427, for interstate application within the South and from producing points in central territory to destinations in the South. The surcharge of 1 cent has been added to the interstate rates.

The cement plants at Speeds, 11 miles north of Louisville, and at Osborne, near Dayton, Ohio, secure much of their coal used in the manufacture of cement from the same mines in Kentucky as supply the cement plant at Kosmosdale. The interstate rates on coal have been increased by the surcharge of 6 cents a net ton. The plants at Speeds and Osborne in 1931 shipped several hundred cars of cement to destinations in Kentucky.

Fertilizer manufactured at Louisville is marketed throughout Kentucky in competition with that manufactured at Nashville, New Albany, Ind., and Cincinnati, Ohio. There was a movement of over 100 cars of fertilizer from the Cincinnati district to destinations in Kentucky over the Louisville & Nashville during March and April of 1932. The interstate rates have been increased by the surcharge of 1 cent. Both the interstate and intrastate rates on fertilizer from and to points in Kentucky are, except for the addition of the surcharge to the interstate rates, on the distance-scale basis prescribed in Fertilizer between Southern Points, 113 I.C.C. 389.

Lumber is produced at many points in Kentucky and is sold to furniture manufacturers at Louisville and Frankfort, as well as for general use throughout the State. Rates on lumber from the principal shipping points on the Louisville & Nashville in Tennessee

have been on the same level as the intrastate rates on this line to destinations in Kentucky, and the present rate groups have been in existence for many years. There is a considerable production of lumber in the Big Sandy district on the Chesapeake & Ohio in Kentucky. The rate on lumber from this district to Covington, Ky., for many years has been the same as that to Cincinnati. The interstate rates on lumber have been increased by the surcharge of 12 cents per ton. This increase without a corresponding increase intrastate has disrupted the group relations both as to origins and destinations, where points in Kentucky and in an adjoining State are included in the same group.

In Lee Clay Products Co. v. Chesapeake & O. Ry. Co., 167 I.C.C. 630, we found the then existing interstate rates on sewer pipe from Clearfield, Ky., to destinations in southern territory unduly prejudicial to the shipper at Clearfield and unduly preferential of its competitors at Louisville, Frankfort, and Owensboro, Ky., and Cannelton, Ind., and recommended the establishment of rates made 17.5 percent of the first-class rates for the removal of the undue prejudice. The carriers established the 17.5 percent basis on sewer pipe moving interstate between the points in the southern region and moving intrastate in Georgia, Kentucky, and North Carolina. In a case before the Kentucky Railroad Commission, heard jointly with the interstate case, that body approved the 17.5 percent basis within Kentucky. The interterritorial rates on sewer pipe between official and southern territories are 25 percent of the corresponding first-class rates. All interstate rates on sewer pipe have been increased by the surcharge of 2 cents.

41 A manufacturer of sewer pipe, flue lining, and related products at Clearfield asks that the rates on these commodities be excepted from any order requiring the addition of the surcharge to Kentucky intrastate rates. The intrastate rates on sewer pipe in Ohio and Indiana are lower than the interstate rates applicable throughout central territory, and the Kentucky intrastate rates without the surcharge are higher for distances beyond 100 miles than the rates applicable for the same distances intrastate in Ohio, Indiana, Tennessee, Alabama, Georgia, and North Carolina, with the surcharges included.

The interstate rates on sand, gravel, crushed stone, and similar materials in southern territory and the intrastate rates in most southern States, including Kentucky, are the distance-scale rates prescribed in Rates on Chert, Clay, Sand, and Gravel, 122 I.C.C. 133. We also prescribed these distance-scale rates on sand and gravel from Cleves, Ohio, to Independence and Butler, Ky. All interstate rates and the intrastate rates in adjoining States have been increased by the surcharge of 6 cents a net ton. Sand and gravel is shipped to points in Kentucky from Nashville and Johnsonville, Tenn. Crushed stone is shipped from Franklin and Mascot, Tenn. Shippers at these points compete with producers of sand and gravel located at Louisville and

Carrollton, Ky., and with producers of crushed stone located at Frankfort, Lexington, Russellville, Clermont, Mount Vernon, Upton, Bombey, Dungan, Yellow Rock, Hopkinsville, and Tyrone, Ky.

The class 7 rates prescribed in the southern class-rate revision apply on leaf tobacco intrastate in Kentucky. This basis was prescribed by the Kentucky commission. Class 6 rates apply generally on leaf tobacco for interstate hauls from and to points in Kentucky and have been increased by the surcharge of 1 cent. Shippers state that the intrastate rates are 34.44 per cent of first-class rates, whereas the intrastate rates in Virginia are 29.91 per cent of the first-class rates. During the months of March and September 1931 there was a movement of 4,701,200 pounds of leaf tobacco at intrastate rates and 9,118,000 pounds at interstate rates from and to points in Kentucky, on or via the line of the Louisville & Nashville.

There was a movement of over 2,000,000 tons of coal from mines on the Louisville & Nashville in Kentucky to destinations in Kentucky during 1931. Most of this coal moved over intrastate routes. However, coal from some mines in Kentucky moves over interstate routes to destinations in Kentucky. Rates from coal mines in Kentucky and the adjoining States have been grouped for many years, and the relation between the groups has been determined by the quality of coal produced and distance to common markets. The Jellico-Middlesboro group extends from Corbin, Ky., south on the Louisville & Nashville to Morley, Tenn., and southeast to
42 Blackmont, Ky., and Cumberland Gap, Tenn. The rate has been the same from all points in this group to Louisville since 1893. The failure of the Kentucky commission to authorize the surcharge has disrupted this group so far as coal moving to Kentucky from the Tennessee mines is concerned.

The rates on coal from the LaFollette and Windrock groups in Tennessee, and the Harlan-Benham, Hazard, and McRoberts groups in Kentucky, and the Appalachia group in Virginia have been the same differentials under or over the Jellico-Middlesboro group since 1918. Prior to 1918, the rates from mines in western Kentucky to destinations in Kentucky were 10 cents a ton higher than those from the Booneville group in Indiana. Due to higher percentage increases in official territory, the rates from the Indiana mines became higher than those from Kentucky, but were reduced by the carriers to the same level as the Kentucky rates. There was a movement of 1,701 cars of coal from Indiana mines to Louisville over the Southern in 1931.

The rates from the Kanawha group on the Chesapeake & Ohio in West Virigina to Louisville and Lexington have always been the same as those from the Big Sandy group in Kentucky. The mines outside of Kentucky which have been accorded a rate parity with Kentucky mines to Louisville and other important consuming centers in the State in most instances have an advantage in distance. The Kentucky intrastate rates are usually lower for similar distances

than rates from the same mines to interstate destinations in southern territory. The failure to apply the surcharge on Kentucky intrastate traffic has increased the differentials 6 cents a ton to Kentucky destinations in favor of Kentucky mines, and has disrupted established groups where points in Kentucky and in adjoining States are included in the same group.

The relation existing January 3, 1932, between the rates on coal from the various groups in eastern Kentucky, Tennessee, and southwest Virginia to south-bank Ohio River cities, and those from the same groups to New Albany, Jefferson, and Evansville, Ind., and Cincinnati have been in effect for many years and in some instances have been approved by us or by the Kentucky commission. All of the interstate rates have been increased by the surcharge, except rates from the New Albany and Kanawha groups on the Chesapeake & Ohio in West Virginia to Cincinnati, Covington, Newport, and some intermediate points. These rates were made to enable the producers in West Virginia to compete with producers on the line of the Louisville & Nashville in Kentucky and Tennessee, and for that reason the surcharge has not been applied.

43 Coal operators in Kentucky contend that the coal industry in that State is in a worse financial plight than the railroads. The coal production in Kentucky for the first three months of 1932 was 39 percent less than the production for the same period in 1930. The operators assert that the addition of surcharges to coal rates will cause certain manufacturers now using large quantities of coal to substitute gas as a fuel or to use hydroelectric power. Similar allegations were made by coal operators in various parts of the country in Ex parte No. 103, and were considered in reaching our conclusions.

The Louisville & Nashville, on the basis of traffic handled during March and September 1931 estimates that it would collect $182,739 additional annual revenue if the surcharges were applied to Kentucky intrastate traffic. It allots to itself, in this estimate, 50 percent of all interline charges collected. The Chesapeake & Ohio, on the basis of the traffic handled during March 1932 estimates that it would receive $42,812 additional annual revenue. The Illinois Central Railroad Company estimates that it would receive $84,022 more per year, and the Southern Railway Company and Cincinnati, New Orleans & Texas Pacific Railway Company estimate that they would receive about $19,600 a year additional.

Shippers refer to the annual reports of the respective carriers operating in Kentucky to show that the latter have received aid from the Reconstruction Finance Corporation and that they have further benefited by reductions in salaries and wage scales. They contend that any necessary relief should come from these sources, because an increase in the rail rates will divert the traffic. Motor trucks now handle foodstuffs, hardware, clothing, and other merchandise in considerable volume throughout Kentucky.

Certain Kentucky interests presented data to show that in various States, including Alabama, Florida, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and Ohio, the surcharges have not been permitted to be applied intrastate on all of the descriptions of traffic upon which they were authorized interstate, and that no petitions seeking the institution of section 13 proceedings with respect to these States have been filed. It is contended that there is no more reason for requiring Kentucky shippers to pay the surcharges on their intrastate traffic than shippers of the commodities which have been excepted from the surcharges in the other States mentioned.

We find that in view of the surcharges which have become effective interstate in the freight rates on the classes and commodities here in question, under our findings in Fifteen Percent case, 1931, supra, respondents' intrastate rates in Kentucky on the same
44 classes and commodities, to which no corresponding surcharges have been added, have resulted and will result in unjust discrimination against interstate commerce. We further find that this unjust discrimination shall be removed by applying to the present intrastate rates in Kentucky on said classes and commodities the same surcharges as are and for the future may be contemporaneously maintained by respondents, in accordance with the findings in Fifteen Percent case, 1931, supra, on corresponding interstate traffic.

These findings are without prejudice to the right of the authorities of the State of Kentucky or of any other interested party to apply in the proper manner for a modification of our findings, and order, if one is issued, as to any specified intrastate rate on the ground that the latter is not related to interstate rates in such a way as to contravene the provisions of the interstate commerce act.

Part 5—Louisiana

The Louisiana Public Service Commission authorized the surcharges on intrastate carload rates, except those on sand, gravel, shells, crushed stone, and similar road-building materials; salt cake; fertilizer and fertilizer materials; cottonseed cake, meal, bran, hulls and meats; bagasse; pulpwood; stave bolts; sugarcane, raw and refined sugar; sweetpotatoes; fresh vegetables; pulverized limestone; waste wood; second-hand sugar bags; waste paper; soya beans, velvet beans, Austrian winter peas, and cow peas; rosin sizing; potash nitrate; sirup and molasses; blackstrap molasses; crude fire clay; clay, n.o.i.b.n.; charcoal; and bolts. It also excepted all less-than-carload rates.

It is estimated that, based on the traffic of 1931, the application of the surcharges on the excepted commodities would produce additional annual revenue of $26,420 to the Gulf Coast Lines, $53,470 to the Missouri Pacific Railroad Company, $1,848 to the New Orleans & Lower Coast Railroad Company, $108,442 to the Texas & New Orleans Railroad Company, $92,198 to the Texas & Pacific Railway

Company, $12,493 to the Kansas City Southern Railway Company, and $101,798 to the Illinois Central. The Louisiana & Arkansas Railway Company would receive $37,911 additional revenue on sand, gravel, and crushed stone. Railroad traffic men expressed the opinion that, notwithstanding possible diversions of traffic to other transportation agencies, the addition of the surcharge to the intrastate rates would produce an increase in revenue.

The rates on sand, gravel, crushed stone, and related commodities from points in Arkansas and Texas to destinations in Louisiana and between points in Louisiana west of the Mississippi River are the distance-scale rates prescribed in Sand, Gravel, Crushed Stone, and Shells, 155 I.C.C. 247. The rates for interstate hauls to
45 destinations in Louisiana east of the Mississippi River are the distance-scale rates approved in Sand, Gravel, Slag, Stone, and Chert, 165 I.C.C. 731. The Louisiana commission recently approved, with certain exceptions, the establishment on June 1, 1932, of the same intrastate rates east of the Mississippi River that were and are applicable in the territory west thereof. All of the interstate rates have been subjected to the surcharge of 6 cents per net ton.

Sand and gravel producers shipping from Reader, Ark., on the Reader Railroad, about 70 miles from the Louisiana border, via that line and the Missouri Pacific, from Lewisville, Ark., on the St. Louis & Southwestern, about 30 miles from the Louisiana border, and from Wilton, Ark., on the Kansas City Southern, about 50 miles from the Louisiana border, state that the assessment of the surcharge on shipments of sand and gravel from Arkansas to Louisiana destinations but not on intrastate shipments has caused them to lose business in Louisiana. Formerly these producers shipped about 50 percent of their production to Louisiana points. The plant at Reader shipped 370 cars to such destinations during the three months ended January 4, 1932, and only three cars during the three following months. A contract with a contractor in Louisiana was canceled because of failure to agree as to who should pay the surcharge. However, the decline is not due entirely to the interstate surcharge, for the Louisiana Highway Commission discontinued the construction of new roads in December 1931.

The State Highway Department of Louisiana maintains about 14,000 miles of highway and this work requires many cars of gravel, crushed stone, crushed shell, etc., each year. Due to an increase in the rates on gravel in Louisiana west of the Mississippi River in October 1929 the highway commission has used trucks and barges whenever feasible to transport these commodities. Hard-surface highways parallel every railroad in Louisiana and the southern part of the State is honeycombed with navigable streams on which barges operate. The State Highway Commission proposes to divert additional tonnage to trucks and barges if the surcharges are added to the present rates.

Sugarcane moves almost entirely intrastate in Louisiana, and there is no interstate movement of bagasse. At the hearing it was stated for the Louisiana Commission that the surcharge would increase the rate on sugar for the intrastate haul from New Orleans and certain other points to Shreveport from 39 to 41 cents, whereas the Louisiana & Arkansas was then seeking permission to reduce this rate to 20 cents. Competitive conditions have caused certain carriers operating in Louisiana to establish pick-up and delivery service at greatly reduced rates on some commodities.

46 The use of fertilizer on Louisiana farms has been greatly curtailed because of the financial condition of farmers. The tonnage used on Louisiana farms during the 1929–1930 season was 185,145 tons, and this declined to 96,168 tons during the 1930–1931 season and to 51,180 tons during the 1931–1932 season. Cottonseed and cottonseed products sold during the 1931–1932 season for one third or less of the price received in the 1929–1930 season. The price of these products is on a delivered basis and all transportation costs are borne by the farmer. It is contended that the addition of the surcharge will further curtail the use of fertilizer and will cause the cottonseed to be left on the farm, eliminating entirely the transportation of both commodities.

There has been an increase in the amount of fresh vegetables produced and marketed in Louisiana during the past few years, but the tonnage of fresh vegetables delivered by the railroads has declined. This tonnage has shifted to other methods of transportation. Sweetpotatoes are an imported crop in Louisiana, and it is contended that it is discriminatory to assess a surcharge on sweetpotatoes when other potatoes are exempted from such charges.

There is nothing of record which warrants the conclusion that the situation as to fertilizer, cottonseed, cottonseed products, fresh vegetables, or sweetpotatoes is different in Louisiana from what it is in other parts of the country, or in surrounding States, where surcharges are now being assessed. Similar allegations with respect to the probable effect of truck competition and as to the inability of various commodities to stand any increase, were made in Ex parte No. 103 and were considered in reaching our conclusions. Nor is there anything to show that the movement of sweetpotatoes will be adversely affected by the application of a surcharge thereon without a similar charge on other potatoes.

We find that in view of the surcharges which have become effective interstate in the freight rates on the classes and commodities here in question, under our findings in Fifteen Percent case, 1931, supra, respondents' intrastate rates in Louisiana on the same classes and commodities, to which no corresponding surcharges have been added, have resulted and will result in unjust discrimination against interstate commerce, except in the case of the intrastate rates on sugarcane. We further find that this unjust discrimination shall be re-

moved by applying to the present interstate rates in Louisiana on the said classes and commodities, except sugarcane, the same surcharges as are and for the future may be contemporaneously maintained by respondents, in accordance with the findings in Fifteen Percent case, 1931, supra, on corresponding interstate traffic.

47 These findings are without prejudice to the right of the authorities of the State of Louisiana or of any other interstate party to apply in the proper manner for a modification of our findings, and order if one is issued, as to any specified intrastate rate on the ground that the latter is not related to interstate rates in such a way as to contravene the provisions of the Interstate Commerce Act.

Sugarcane is excepted because sugar beets were excepted from interstate surcharges in Fifteen Percent case, 1931, supra. The failure also to except sugarcane was an inadvertence. Its movement is practically all intrastate within Louisiana, but if the surcharge has been applied to any interstate movements, respondents will be expected to eliminate it.

Part 7—Montana

The Board of Railroad Commissioners of Montana refused to allow the surcharges on any intrastate traffic. Respondents roughly calculate, on the basis of the estimated intrastate traffic of Montana in 1930, that this refusal is depriving them of more than $257,000 per year. On the basis of more exact data for the first three months of 1932, equated to a year, indicating that Montana intrastate traffic has fallen off about 40 percent since 1930, they estimate the yearly loss at about $150,000. This is compared with $3,000,000 per year, the estimated increase in revenue accruing to the Montana lines from all the surcharges which have been permitted interstate and intrastate in the territory which they serve.

Two scales of class rates apply intrastate in Montana. There is a distributing scale from jobbing points and another, 10 percent higher, for general application from and to other points. Except for the general percentage increases and reduction of recent years, the former is the same as that prescribed in Portland Chamber of Commerce v. O. R.R. & N. Co., 21 I.C.C. 640, for application from north Pacific coast points to the interior as far east as Montana. This scale moves most of the class-rate traffic in Montana. For 1-line hauls, which predominate, and in the case of the higher classes, at least, it is generally lower, up to 340 miles, than scale III, prescribed in Western Trunk-Line Class Rates, 164 I.C.C. 1, and which applies just east of the Montana-North Dakota State line. Failure of the State to permit application of the surcharges widens the existing disparities against interstate traffic.

In Rates on Petroleum and its Products in Montana, 176 I.C.C. 707, decided July 13, 1931, we found that the intrastate rates on refined and low-grade petroleum products, not including crude petro-

leum, prescribed by the Montana commission in its docket no.
48 1020 resulted and would result in undue preference and advantage to shippers of intrastate traffic within Montana, in undue prejudice to shippers of interstate traffic from points in Wyoming to points in Montana, and in unjust discrimination against interstate commerce; also that said preference, advantage, prejudice, and discrimination could and should be removed by the establishment of rates for intrastate application in Montana which should not be lower for corresponding distances than the rates on the respective commodities contemporaneously in effect from Casper and Cody, Wyo., to points in Montana. The State commission later authorized the same scale of rates for intrastate application as we prescribed interstate. At present the surcharge of 1 cent applies interstate, but not intrastate, and the relative parity which our decision contemplated has been destroyed. There is a substantial movement of petroleum products intrastate and interstate on these rates.

In Western Coal Rates, 80 I.C.C. 383, decided June 15, 1923, we had before us the relations between certain Montana intrastate rates and certain interstate rates from Wyoming mines to Montana destinations. We found that the rates on lump coal from Sheridan, Wyo., to points in Montana on the line of the Northern Pacific east and west of Billings, Mont., and on the line of the Great Northern on traffic routed via Billings, were not unreasonable, but for the future would be unduly prejudicial to Sheridan and unduly preferential of Red Lodge, Mont., to the extent that they exceeded by more than specified amounts the rates contemporaneously in effect from Red Lodge. We further found that the rates from Kirby, Wyo., to destinations on the Northern Pacific and Great Northern were not unreasonable, but for the future would be unduly prejudicial to Kirby to the extent that they exceeded by more than a specified amount the contemporaneous rates from Red Lodge to the same destinations. Since January 4, 1932, the application of the surcharge to the interstate rates has made the differentials against the Wyoming mines 6 cents per ton greater than those prescribed. The movement interstate and intrastate from these competing producing points is heavy. Montana coal is meeting increasing competition from natural gas.

Sugar shipped from San Francisco, Calif., and Wyoming points to Montana destinations competes with sugar sold at the same figures and moved intrastate from Montana producing points. Lumber shipped from Idaho and Washington competes in Montana with lumber moved intrastate from Montana points. Application of the surcharges on only interstate traffic gives the intrastate traffic a new advantage.

49 The Anaconda Copper Mining Company opposes the surcharges sought on its products. Prices of nonferrous metals have reached a very low state. The industry is in a depressed financial condition; mining, smelting, and refining operations are at low ebb; many plants are closed down and thousands of employees are

out of work. Business is being conducted at a loss and any increase in freight charges will, it is asserted, result in greater deficits. This protestant is particularly interested in avoiding the increase of 10 percent in the rate on its movement of ore and concentrates from mines in and about Butte, Mont., to its smelter at Anaconda, Mont., about 24.5 miles away, on the average, over the line of the Butte, Anaconda & Pacific Railway. This railroad, however, is controlled by the Anaconda company, and an increase in its revenue would accrue to the advantage of the latter. Protestant submitted numerous comparisons to show that the intrastate rates on ore and concentrates are not low, compared with corresponding interstate rates.

Protestant ships large quantities of copper bullion from Anaconda to its refinery at Black Eagle, Mont., a distance of 201 miles, over the line of the Great Northern. The rate is $2.50 per ton. The surcharge would make it $2.75, except that on shipments accorded transit there would instead be the 40-cent surcharge which is now applied to the through interstate movement in and out of Black Eagle. The total surcharge on the ore and concentrates, bullion and refined copper, considering the three separate movements, would amount to $1.31 per ton of refined copper, of which 40 cents is now levied. Copper rods, produced at Black Eagle, are used in large quantities at Detroit, Mich., and any additional freight charge would make it more difficult for protestant to compete with foreign copper reaching Detroit from Canada or via the New York State Barge Canal. Protestant could close its Black Eagle rod mill and make its rods at Hastings-on-Hudson, N.Y., using water-borne copper. This might result, it is said, in closing the only two mines still in operation at Butte. Utah and Arizona bullion is refined in transit and subject to only one surcharge. There is no intrastate movement of bullion in those States which is subject to an intrastate surcharge. There would be none in Montana if there were a satisfactory transit arrangement in force at Black Eagle. The situation with respect to zinc is similar.

Protestants produce at Anaconda acidulated phosphates, a fertilizer. There are rates thereon of 35 cents to St. Paul, Minn., and Missouri River cities, and 21 cents to Spokane, Wash., the latter being made to meet Canadian competition. Except for the sur-
50 charges, the same rates apply to intermediate points in Montana for comparatively short hauls, subject to the qualification that where the clasification basis results in lower rates, that basis applies. In view of the relatively high rates to the Montana points protestant contends that if there is any undue burden, it is on intrastate, rather than interstate, commerce.

The Hansen Packing Company, with a plant at Butte, protests the application of intrastate surcharges on packing-house products, on the ground that they would make it more difficult to compete with packers who ship into the State. High freight rates and long hauls practically exclude protestant from important markets outside the State.

We find that in view of the surcharges which have become effective interstate in the freight rates on the classes and commodities here in question, under our findings in Fifteen Percent case, 1931, supra, respondents' intrastate rates in Montana on the same classes and commodities, to which no corresponding surcharges have been added, have resulted and will result in unjust discrimination against interstate commerce, except in the case of the intrastate rates on ores and concentrates. We further find that this unjust discrimination shall be removed by applying to the present interstate rates in Montana on the said classes and commodities, except ores and concentrates, the same surcharges as are and for the future may be contemporaneously maintained by respondents, in accordance with the findings in Fifteen Percent case, 1931, supra, on corresponding interstate traffic.

These findings are without prejudice to the right of the authorities of the State of Montana or of any other interested party to apply in the proper manner for a modification of our findings, and order if one is issued, as to any specified intrastate rate on the ground that the latter is not related to interstate rates in such a way as to contravene the provisions of the interstate commerce act.

The reasons for exempting ores and concentrates are the same as those stated in the case of the Idaho rates.

Part 8—Nebraska

The Nebraska State Railroad Commission denied respondents authority to apply the surcharges on the following commodities: 1. Sand and gravel, other than glass or molding; 2. Stone, broken, ground, or crushed; 3. Common brick, face brick, hollow tile or building tile, brick, n.o.s. A statement of the intrastate tonnage of these commodities in Nebraska for the year 1931, and the estimated
51 additional revenue that would accrue to respondents if the surcharge were added is as follows:

Commodity	Nebraska intrastate tonnage 1931, tons	Estimated [1] additional revenue
Sand and gravel (other than glass or molding)	1,775,140	$106,508.40
Stone, broken, ground, or crushed	26,174	1,570.44
Common brick	24,726	4,945.20
Hollow tile or building tile brick, n.o.s. face brick	15,987	3,197.40
Total	1,842,027	116,221.44

[1] The surcharge is 6 cents per ton on sand, gravel, and stone, and 1 cent per 100 pounds on the other articles.

Throughout Nebraska, except the extreme western portion thereof, there are extensive sand and gravel deposits, either in the rivers or as the result of glacial deposits. Within the last two years respondents have been required to meet very severe truck competition between points in the State, especially from roadside pits and river banks.

Respondents' lines are largely paralleled by hard-surfaced roads. Prior to 1930 they experienced no great difficulty in maintaining their so-called standard sand and gravel rates in Nebraska, but in the early part of that year truck competition became so keen that they sought authority of the Nebraska commission to reduce the rates on these commodities, as well as on crushed stone, between certain points in the State. The so-called standard scale of sand and gravel rates in the State had its inception in 1920–1921, when the intrastate rates were established in consequence of Nebraska Rates, Fares, and Charges, 60 I.C.C. 305. Subsequently the order in that case was relaxed and the scale of rates on sand and gravel within the State became a matter of agreement or compromise between sand and gravel shippers, the Nebraska railroads, the State commission, and this commission. The standard scale is also applicable between Nebraska points, on the one hand, and Kansas and Missouri, on the other, except that the surcharge of 6 cents per ton has been added on the interstate traffic.

Certain reduced emergency rates on sand and gravel and crushed stone were established by respondents in Nebraska to meet truck competition in the early part of 1931, to expire December 31, 1931, but the truck competition became so keen that the period for their retention was extended to December 31, 1932. These emergency rates are substantially lower than the standard scale. For 50 miles the latter scale is 70 cents, whereas the emergency scale is 50
52 cents per ton. Before respondents may establish intrastate rates they must receive authority from the Nebraska commission. These emergency rates on sand and gravel, as well as on crushed stone, were established upon application of respondents to the Nebraska Commission, and respondents desire to retain them, believing them necessary to meet truck competition. They are restricted to single-line hauls, and, with a few exceptions, no switching charges are absorbed in connection with them. Most of them apply for relatively short hauls. We may, therefore, consider that respondents have withdrawn their petition in so far as it relates to authority to increase the so-called emergency rates on sand and gravel, as well as on crushed stone, now applicable between points in the State.

In all other instances, where the standard State scale on sand, gravel, and crushed stone applies, respondents insist that they should be permitted to increase their rates by the surcharge, as has been done on interstate traffic. There is an interstate movement of sand and gravel and also crushed rock or stone from Kansas to Nebraska and, to some extent, from Missouri to Nebraska. In 1931 the Chicago, Burlington & Quincy Railroad Company transported from Nebraska to interstate destinations 5,031 carloads of sand and gravel. The majority of the hauls in the State by truck are less than 20 miles, whereas the nearest sand and gravel pit in many instances is 75 miles by railroad. Respondents seek to apply the surcharges to the rates for these longer distances.

A witness testified that he shipped 666 carloads of sand and gravel from Hanover, Kans., to Nebraska destinations in 1931. Since the surcharge was added to these rates this shipper has not been able to ship a single carload into Nebraska. Some of his competitors are located at Endicott and Fairbury, Nebr. He testified that during the month of April 1932 contracts for the purchase of approximately 1,250 carloads of sand and gravel were consummated in Nebraska territory which formerly has been regarded as competitive, but that his company did not receive orders for any of this material, although its sand and gravel is similar to that produced in Nebraska.

Stone, broken, ground, or crushed, competes with sand and gravel in road building, and what has been said with respect to sand and gravel applies with equal force to stone.

The State brick scale applying on the uniform brick list is the same as prescribed in Ballou Brick Co. *v.* A., T. & S. F. Ry. Co., 77 I.C.C. 4, for single-line application from Sioux City and Sargents Bluff, Iowa, to destinations in Nebraska. The finding in that case prescribed rates consistent with those in Mason City Brick & Tile Co. *v.* Director General, 77 I.C.C. 22, for application on brick from
53 Mason City and near-by Iowa points to destinations in Nebraska. The two cases last mentioned were reopened, consolidated, and resulted in the fixing of a uniform scale to Nebraska destinations from producing points in Illinois, Iowa, and Kansas, in Mason City Brick & Tile Co. *v.* Director General, 107 I.C.C. 702. The basic scale was made applicable in that case for both single-line and joint-line hauls, and for single-line hauls varied from 0.5 cent under to 0.5 cent over the Ballou brick scale, except that the rates were the same for single-line hauls for distances of from 150 to 250 miles. One cent is added for joint-line hauls in the Ballou scale. At the time of the decision of the Ballou case, respondents applied to the Nebraska commission for authority to establish that scale on interstate traffic, such authority was granted, and this scale of rates, as stated, is now in effect between points in the State.

The rates applicable on the uniform brick list also apply on hollow tile or building tile, and there is a substantial movement of these commodities in interstate commerce, principally to Nebraska.

The rates on common brick were likewise treated in the manner indicated in the cases cited, and the Ballou scale adopted in Nebraska. The present rates prescribed on interstate traffic to Nebraska in the second Mason City Brick case, supra, for single-line and joint-line hauls are 0.5 cent higher than applicable for single-line hauls between points in Nebraska for distances as high as 150 miles, at which distance the rates are identical. One cent is added to the State rates, based on the Ballou scale, for joint-line hauls. No rates were prescribed on common brick for distances beyond 150 miles in the Mason City Brick & Tile case. If the surcharges were added to the intrastate single-line rates, those rates would still be lower than the interstate scale, whereas if the surcharges were added to the joint-line intrastate scale, the total rates would result for most distances

in rates substantially the same as the present interstate rates. Brick is hauled by truck for distances which rarely exceed 50 miles and ordinarily are not in excess of 35 miles. The Nebraska commission denied the increase on brick and related articles on the ground that they are competitive with sand and gravel. While there is some competition between brick and sand or gravel, we have never considered such competition as requiring any fixed relation between the rates on the respective commodities. There is nothing of record here to warrant a change in this respect.

We find that in view of the surcharges which have become effective interstate in the freight rates on the commodities here in question, under our findings in Fifteen Percent case, 1931, supra, respondents' intrastate rates in Nebraska on the same commodities, to which
54 no corresponding surcharges have been added, have resulted and will result in unjust discrimination against interstate commerce, with the exception of the so-called emergency rates on sand, gravel, and crushed stone. We further find that this unjust discrimination shall be removed by applying to the present intrastate rates in Nebraska on the said commodities, except the so-called emergency rates on sand, gravel, and crushed stone, the same surcharges as are and for the future may be contemporaneously maintained by respondents, in accordance with the findings in Fifteen Percent case, 1931, on corresponding interstate traffic.

These findings are without prejudice to the right of the authorities of the State of Nebraska or of any other interested party to apply in the proper manner for a modification of our findings, and order if one is issued, as to any specified intrastate rate on the ground that the latter is not related to interstate rates in such a way as to contravene the provisions of the interstate commerce act.

Part 9—Oklahoma

This part was heard jointly with a case before the Corporation Commission of Oklahoma.

The State commission denied increases on the following traffic:

1. Petroleum oils, refined and other gasolines, as named in group no. 450, and fuel, road, and petroleum residual oils, as named in group no. 451, both of Agent J. E. Johanson's tariff I.C.C. no. 2398, when such commodities are moving for further manufacture.

2. Crude oil and other commodities as set out in group no. 360 of the same tariff.

3. Cottonseed products, including cottonseed bran, cake, hulls, meal, and meats.

4. Feed, animal or poultry, n.o.i.b.n., where subject to rate applicable upon wheat or corn or when composed of 80 percent of more of wheat or corn or the products of wheat, corn, and/or cottonseed.

5. Less-than-carload traffic, where the first-class rate is $1.04 or less. Where the first-class rate is in excess of $1.04 and does not exceed $1.23, a surcharge of 1 cent was allowed.

The volume of this Oklahoma intrastate traffic, the surcharges on corresponding interstate traffic, and the amounts by which respondents estimate their revenues would be increased, if the surcharges were applied to the intrastate tonnage for a constructive yearly period, are shown as follows:

55

Commodity	Oklahoma intrastate	Increase [1]
	Tons	
1. Petroleum oil, refined, and other gasolines, and fuel, road, and petroleum residual oils, moving for further manufacture	917,473	$183,494.38
2. Crude oil and other commodities, as set out in group 360	312,913	62,583.60
3. Cottonseed bran, cake, hulls, meal, and meats, enumerated in group 101	35,071	7,014.17
4. Feed, animal or poultry n.o.i.b.n., group 701	4,456	891.10
5. Less-than-carload traffic:		
A. Where the first-class rate is $1.04 or less	64,564	25,826.26
B. Where the first-class rate is in excess of $1.04 and does not exceed $1.23	4,983	996.54
	1,339,460	280,806.05

[1] The surcharge is 1 cent per 100 pounds on all the groups except 5 A, on which it is 2 cents.

The yearly period of movement selected by respondents was not uniform, but the tonnage shown moved generally in 1930 and 1931.

There is a considerable rail movement of petroleum oils, State and interstate. Pipe lines parallel practically all of the rail lines in Oklahoma and carry a large portion of the crude oil.

A witness for the State commission testified that numerous intrastate rates on petroleum and its products for further manufacture have been reduced by respondents, and that the reasons assigned for asking permission to make the reductions were "surplus production", "pipe line competition", "insufficient storage", "flush production", "to avoid the construction of pipe lines", "to get business for Oklahoma City refineries", "all the traffic can bear", "to make a market", and "because the refinery is not in a position to crack the stock". For example, a rate of 13 cents prescribed as reasonable by the Oklahoma commission on kerosene or naphtha (gasoline), forwarded for the purpose of being impregnated with a higher gravity product, from Ardmore, Okla., to Healdton and Ringling, Okla., was reduced to 5 cents "to meet pipe-line competition". Other similar examples are shown.

Oil shippers of Oklahoma appointed a committee consisting of representatives of the principal refineries of the State to present evidence in this proceeding. A member of this committee, an experienced operator, explained the reasons for moving "cracking stock" from one refinery to another. The smaller refineries, not equipped with adequate facilities, merely skim the oil, and unless it is then moved to another refinery equipped to apply the higher heat, it must be sold at local points as fuel oil, road oil, or some other like commodity. He further explained that the blending of high-grade with low-grade gasoline could be accomplished at almost any point. He testified that if the surcharge were imposed on this traffic, steps would be taken to avoid intermediate shipments for mixing

or blending, and these processes would then take place at final destination.

56 The chairman of the committee testified that if the surcharge were applied on intrastate shipments, his company might purchase trucks equipped to handle natural gasoline from the Oklahoma City field to Cyril, Okla., for blending, and to carry a return load of marketable gasoline to Oklahoma City. Many movements of natural gasoline now take place by pipe lines, and more of the pipe lines which now transport other kinds of oil can be adapted to this use if need develops. This same witness testified that the surcharge would in a sense be collected twice on this class of traffic, once into the refining point, and then on the separate shipment of the refined product outbound to the consuming point. He showed that on 171,000 gallons of gasoline, about 10 percent of which was natural gasoline which moved from Oklahoma City to Cyril for blending, a saving of $304 in freight would have resulted had the stock been blended at Oklahoma City. He further stated that the practice of blending at destination would be attempted if the surcharge is added. His company ships 35 carloads of gasoline per day, and if the practice of blending the stock at destination were adopted on all these shipments, there would be a loss of revenue to the carriers of $150,000 annually.

Fifteen of the principal refineries of Oklahoma answered a questionnaire sent out by the State commission, indicating that five of them are now shipping natural gasoline for blending at destination. Nine of them stated that an increase in the present intrastate freight rates would cause them to seek other methods of transportation or install vapor-recovery systems at their refineries and thus save transportation costs to other refining points. At present 10 of the 15 receive their natural gasoline by rail; the remainder receive it by pipe line or truck.

Another member of the committee, representing a large refinery, testified that from January to October 1929 his company was in the market for cracking stock to move from Cushing to Ponca City, but respondents' so-called normal rates were too high to attract the traffic, so that 1,390 carloads were transported through pipe lines from and to the points named. On March 17, 1930, respondents established a rate of 7 cents to attract this business and since then the shipments have moved from Cushing to Ponca City by rail. Other instances are given where respondents reduced the rates to attract the traffic.

A witness representing an oil refinery at Ponca City testified that a very low rate of 12.5 cents was established last year from Oklahoma City to Ponca City on casing-head gasoline for further manufacture, but that his company had used tank wagons for transporting it from and to these points, as well as from Talbant, Okla., and Wichita and Arkansas City, Kans., to Ponca City. He testified that if

57 the carriers increase their intrastate rates, his company will use pipe lines and trucks to a greater extent than at present.

Another oil shipper, located at Tulsa, testified that it is possible for his company to increase the recovery of casinghead gasoline to the extent of 25 percent, or approximately 13,000,000 pounds per year; that this is equivalent to $15,840 freight charges which his company is now paying for the transportation by rail of casinghead gasoline from the Oklahoma City field; and that the application of the surcharge might result in the carriers losing the freight charges in their entirety. Another testified that all casinghead gasoline to his plant at Ponca City is now moving by pipe line.

Crude oil moves by rail between points in Oklahoma, as well as to refineries outside of the State. Respondents' witness, after thorough investigation, testified that, in his best judgment, the addition of the surcharge to intrastate rates would increase their revenues.

The oil shippers of Oklahoma testified that, because of the numerous pipe lines in the State and the relatively lower charges for transportation by that means, crude oil will not move by rail except at a very low rate. Most of the crude oil between points in the State now moves by pipe line. Respondents reduced their normal rate of 12 cents, fixed as reasonable by the State commission from Oklahoma City to Ponca City, to 5 cents, and yet this low rate did not regain this traffic. Respondents also reduced their normal rates on crude oil from Oklahoma City to Blackwell, Okla., from 13 cents to 5 cents, and from Oklahoma City to Cushing, Okla., from 11 cents to 4.5 cents, representing to the State commission that these lower rates were all the traffic would bear. Witness for the oil shippers testified that any increase in these lower rates will, as represented by the respondents when they were established, divert the traffic to the pipe lines or trucks.

The chairman of the committee, also representing two large oil refineries in Oklahoma, testified that in 1931 more than 500 carloads of crude oil were shipped from Oklahoma City to Cyril, Okla., but that in the first four months of 1932 only 16 carloads were so shipped and they represented crude oil not profitably salable to the pipe lines. The diversion of this crude oil to the pipe lines, it is testified, was due to the fact that a lower rate was thus obtained than the rate of 5 cents maintained by respondents from and to these points. This witness further testified that all of the cars used for the 500 shipments in 1931 were loaded back with fuel oil through Oklahoma City, thus giving respondents a loaded haul in both directions, which, it is estimated, saved approximately 65,000 empty-car miles.

Another member of the committee, also representing a large oil refinery, testified that his crude-oil shipments from Borger,
58 Tex., to Ponca City were discontinued upon the application of the surcharge, as it was found cheaper to secure oil from Oklahoma fields by pipe line. Similar testimony was given with respect to residuum oil. The major oil companies of the State make a practice of "trading" crude oil to avoid transportation costs. All crude

oil now received at Ponca City is transported by pipe line. Residuum oil to Ponca City also moves extensively by pipe line.

On cottonseed bran, cake, hulls, meal, and meats we approved a surcharge of 1 cent. The State commission denied a like increase, because we did not approve any surcharge on flaxseed meal, corn meal, and like commodities which are used as feeds in competition with cottonseed products. Cottonseed products originate at mills in the State, as well as at mills in Arkansas and Texas, and move regularly in intrastate and interstate commerce.

A witness representing all of the cottonseed-oil mills in the State made an investigation by means of a questionnaire to ascertain the methods used in transporting cottonseed products. One of the principal mills moved 2,307 tons of cottonseed cake and meal by truck and 1,642 tons by rail in 1932 up to March 23. All of the rail shipments except one were to destinations outside Oklahoma. This same witness testified that, when the weather is clear and the roads in good condition, deliveries can be made by truck to all points in the State.

Experienced witnesses dealing in cottonseed meal and cake testified that there is keen competition between cottonseed products, on the one hand, and grain products, on the other. No surcharge was placed on interstate shipments of grain products.

A heavy movement of cottonseed products now takes place in Oklahoma by truck, and it is testified that any increase in the freight rates on these products would result in heavier movements by truck and consequent decrease in revenue for the carriers, or else the substitution of corn, corn meal, flaxseed meal, linseed meal, and similar feeds on which no increase was authorized. Protestants urge that respondents' exhibit showing a loss of $7,014.17 because of the failure to apply the surcharge on cottonseed products is without good foundation, as much of this traffic would be lost to the rail lines if the surcharge were applied.

On feed, animal or poultry, n.o.i.b.n., we authorize a surcharge of 1 cent. The Oklahoma commission authorized the same surcharge, but changed the description of the commodities, making the increase inapplicable to such feeds as are subject to the rate on wheat or corn, and to such as are composed of 80 percent or more of the products of wheat, corn, or cottonseed. Accurate figures covering
the volume of movement of these commodities could not be
59 obtained and those shown in the foregoing table represent only
a part of this class of traffic on which the surcharge was denied. There is also a substantial interstate movement of this traffic.

Shippers of feed contend that it would be discriminatory to apply a surcharge to mixed feeds generally, so long as none is applied to such feeds composed of grain and grain products. There are many animal and poultry feeds which move at the grain rates and which are composed almost exclusively of grains. Eighty percent of many of these feeds consists of grain products subject to transit rates, and

if the surcharge becomes effective it would not only apply on the 20 percent of nongrain products but upon the entire weight of the shipment, including the 80 per cent of grain which is not now subject to the increase. In other words, the addition of from 1 to 20 percent of so-called nontransit commodities to these feeds would result in that percentage paying the increase inbound and again paying it on outbound shipments.

One witness representing a large feed dealer testified that of 19 of the principal mixed feeds manufactured by his company 10, or more than 50 percent, contain 1 percent, or less, of nontransit ingredients, and that the increase on the entire mixture would result in an increase upon 99 percent of the contents which are entitled to transit and no surcharge when moving without the 1 percent of nontransit tonnage.

It is the practice of feed houses in this territory to ship mixed carloads of mixed feeds, corn, chops, corn meal, and other grain products at grain-product rates, and the application of the surcharge on the mixed feeds containing nontransit commodities will increase the charges on the total carloads to such an extent, it is asserted, that the use of trucks may be encouraged, particularly for distances as great as 150 miles.

Similar contentions as to the competition between cottonseed cake and meal and animal and poultry feeds, on the one hand, and grain products, on the other, were made to us with respect to interstate traffic. Generally speaking, the addition of what protestants refer to as nontransit ingredients results in a product which is of greater value than unmixed grain products, although this is not always the case. Notwithstanding informal requests from various parties to eliminate the surcharge on animal and poultry feeds on interstate traffic, we have not seen fit to do so and that charge is still applied.

On less-than-carload traffic the interstate surcharge is 2 cents. The State commission denied respondents authority to add the surcharge intrastate on this traffic where the first-class rate is $1.04 or less, and allowed only a 1-cent increase where the first-class rate is in excess of $1.04 and does not exceed $1.23. A distance scale of rates applies on Oklahoma intrastate traffic and is generally the same as
60 that prescribed in Consolidated Southwestern Cases, 123 I.C.C. 203, 477. Under that scale the first-class rate for 180 miles and over 170 miles is $1.04, and for distances of 260 miles and over 240 miles the first-class rate is $1.23.

Respondents testified that there is a regular movement of less-than-carload merchandise by rail between points in Oklahoma and that a very substantial part of this tonnage moves within the distance limitations mentioned. The same character of traffic also moves from shipping centers in bordering States, Missouri, Kansas, and Texas, to destinations in Oklahoma subject to the surcharge.

Shippers opposing the surcharge show that less-than-carload tonnage has been decreasing materially in Oklahoma ever since 1923. They concede that a large portion of this is attributable to the gen-

eral shrinkage in railroad traffic, but urge that the great decrease from 1929 to 1931 can not wholly be charged to the depression, as much of the traffic has been diverted to the trucks. Practically every mile of railroad in Oklahoma is paralleled by class A truck lines, i.e., those operating on regular schedules, except in the northern central part of the State. Evidence was introduced to show that the 62 class A truck lines into Oklahoma do not propose to increase their rates for haulage, regardless of any action taken by the railroads.

One shipper testified that in September 1931, a representative month, his company delivered to five of respondents at Oklahoma City 20,000 pounds of less-than-carload freight; that when pick-up-and-delivery service was later inaugurated by respondents, effecting substantially a reduction of 5 cents in the rates, his company immediately increased its rail traffic; that by April, 1932, the volume amounted to 70,000 pounds per month; and that if the surcharges were applied on the intrastate traffic under consideration his company would again divert its freight to trucks. Detailed evidence was introduced by numerous shippers showing the volume of freight they forwarded by truck, and many of them stated their preference for the rail carriers, provided the rates are equally as advantageous as those maintained by truck line. A wholesale grocer testified that 80 percent of his shipments are trucked to destination. A hardware shipper testified that 50 percent of his shipments are trucked outbound. He receives 150 to 200 carloads of interstate shipments annually. Other similar testimony was introduced. Another shipper testified that since the effective date of the interstate increases his company has diverted to trucks between 50 and 60 carloads per year from Kansas City, Mo., to Oklahoma destinations. His opinion was that if the emergency charges on these interstate shipments were removed his company would not again return to rail transportation.

61 Similar contentions with respect to the profitable effect of truck competition on less-than-carload freight were presented to us and considered in connection with interstate traffic. Truck competition constituted one of the more important reasons for denying the 15 percent increase sought by respondents in Ex parte No. 103, but we were not convinced that it was a reason for denying the small surcharges which we substituted. We reach the same conclusion here.

We find that in view of the surcharges which have become effective interstate in the freight rates on the classes and commodities here in question, under our findings in Fifteen Percent case, 1931, supra, respondents' intrastate rates in Oklahoma on the same classes and commodities, to which no corresponding surcharges have been added, have resulted and will result in unjust discrimination against interstate commerce, except in the case of the intrastate rates on oils, refined, and on other gasolines and fuel, road, and petroleum residual oils when such commodities are moving for further manufacture.

We further find that this unjust discrimination shall be removed by applying to the present intrastate rates in Oklahoma on the said commodities, except petroleum oils as above described, the same surcharges as are and for the future may be contemporaneously maintained by respondents, in accordance with the findings in Fifteen Percent case, 1931, supra, on corresponding interstate traffic.

These findings are without prejudice to the right of the authorities of the State of Oklahoma or of any other interested party to apply in the proper manner for a modification of our findings, and order if one is issued, as to any specified intrastate rate on the ground that the latter is not related to interstate rates in such a way as to contravene the provisions of the interstate commerce act.

Refined petroleum products are subject to no surcharges on interstate traffic in the Southwest, because the rates thereon are the same as or lower than those prescribed or approved in no. 17000, part 4–A. We here except also fuel, road, and petroleum residual oils, and naphtha and similar commodities when moving for further manufacture, because we are convinced by the evidence that the imposing of surcharges thereon intrastate in Oklahoma would not result in additional revenue for respondents but might, and probably would, so reduce the amount of traffic handled as to result in less aggregate revenue.

Part 10—Texas

The Railroad Commission of Texas authorized generally on Texas intrastate carload freight traffic the same surcharges as were approved by us on corresponding interstate traffic. It declined
62 to authorize the surcharge on less-than-carload traffic, or on the distance rates on casing-head (natural) gasoline, in tank carloads, but has indicated its willingness to comply with any adverse conclusions which we may reach herein without the issue of an order on our part.

With respect to the less-than-carload rates, respondents show that the principal railroads operating in Texas carried 182,052 tons of such intrastate traffic in 1931, and that, if this volume were maintained, the loss from inability to apply the surcharge would be $72,820.80 per year.

With respect to natural gasoline, it was testified for respondents that prior to 1931 the Texas intrastate rates were based on the refined-oil scale for distances up to 40 miles single-line and 20 miles joint-line, at which distances a rate of 25 cents was reached. This 25-cent rate was blanketed over all hauls within the State for distances in excess of those mentioned. In the summer of 1931 the Texas commission supplanted this adjustment with a distance basis starting with 8 cents for 10 miles and reaching 27.5 cents at 601 miles, the latter rate being blanketed for hauls of greater length. Under this scale a rate of 25 cents was reached at 401 miles. On 4,682 cars of natural gasoline, aggregating 129,400 tons, which moved intra-

state in 1930, but was admittedly not the total movement for that year, the revenue collected was $612,909.47, whereas the scale prescribed by the Texas commission in 1931 would have produced revenue of $492,576.33, or $120,333.14 less. It is also shown that on 6,392 cars aggregating 354,825,237 pounds, the total intrastate movement in 1931, the surcharge would have produced $35,482.52 additional revenue. It was testified that the refined-oil scale prescribed in Refined Petroleum Products in the Southwest, 171 I.C.C. 381 (and subsequent reports), averaged somewhat in excess of 22 percent of the first-class scale, whereas the Texas intrastate scale on natural gasoline averages somewhat in excess of 14 percent of first class.

The rates on natural gasoline were not involved in the case cited, but they were involved in Petroleum and its Products, 171 I.C.C. 286, which covered rates on petroleum products in and between southern and official territories and from various States, including Texas, to those territories. Considerable evidence with respect to natural gasoline was presented in that proceeding and discussed in the report, from which the following is quoted:

"We have considered the nature of this commodity in numerous cases and have consistently refused to accept the view that it is not gasoline. No good and sufficient reason has been here advanced why we should prescribe lower rates on natural gasoline than on ordinary gasoline or other petroleum products."

63 Respondents contend that in view of the relation of the rates on natural gasoline to those on refined petroleum products, and particularly in view of the recent reduction required by the Texas commission in the natural-gasoline rates, there is no justification for failure to permit the surcharge on that commodity. Rates prescribed in Petroleum and its Products, supra, apply on natural gasoline from the Southwest to Mississippi River crossings, and it was testified that rates prescribed in Refined Petroleum Products in the Southwest, supra, have been published and apply, under an alternative provision, on natural gasoline from Oklahoma to Texas. The rates prescribed in those cases were excepted from the surcharges.

The Texas Commission contends that the influences which prompted its general approval of the surcharges on Texas intrastate carload traffic do not exist to the same extent with respect to less-than-carload traffic. It argues that respondents in seeking the surcharge on Texas merchandise traffic have not given due consideration to the fact that the motor truck has made important inroads into that field.

In denying the increase on this character of traffic the Texas Commission was persuaded that no revenue benefit would accrue to the railroads unless a corresponding increase was made in the rates maintained by competing motor transportation agencies. Such an increase was found not justified, and many of these carriers indicated that they were opposed to any increase in their rates. Under these circumstances the Texas Commission was convinced that an increase

in the less-than-carload rates would result in a decrease rather than an increase in the revenues of the railroads. In this connection reference is made to the fact that the gross revenue of the railroads on intrastate less-than-carload traffic dropped from $22,891,539 in 1929 to $13,111,917 in 1931, whereas the truck revenue showed an increase.

In further support of its action the Texas Commission points out that recently some of the Texas railroads, in order to meet the increasingly severe truck competition, have organized so-called rail-transport companies. The service rendered by these companies consists of transportation from store door at origin to store door at destination. The shipments are trucked to and from the railroad stations and the station-to-station service is performed by the railroad under a contract with the transport company. These companies issue their own bills of lading and file their own tariffs. The rates charged are equal to the less-than-carload all-rail rates prescribed by the Texas Commission for intrastate movement, which rates, generally speaking, are also made applicable to similar traffic handled by the common-carrier motor trucks in that State.

64 Evidence in support of the position taken by the Texas Commission with respect to less-than-carload rates was presented by representatives of traffic organizations of Fort Worth, Houston, and San Antonio, Tex., and by several individual shippers doing a considerable less-than-carload business.

Considerable evidence was presented on behalf of manufacturers of natural gasoline in opposition to the application of the surcharge thereon. They show that it is a raw material only suitable for blending with other gasolines and that there has been a marked decrease in production recently. It is contended that natural gasoline will not continue to move by railroad at higher rates, but that the movement will either be diverted to trucks or pipe lines, or that refineries will supply their needs by the installation of cracking or vapor-recovery process, which will eliminate the movement thereto of natural gasoline. The evidence is generally similar to that referred to in Petroleum and its Products, supra.

We find that in view of the surcharges which have become effective interstate in the freight rates on the classes and commodities here in question, under our findings in Fifteen Percent case, 1931, supra, respondents' intrastate rates in Texas on the same classes and commodities, to which no corresponding surcharges have been added, have resulted and will result in unjust discrimination against interstate commerce, except in the case of the intrastate rates on casing-head (natural) gasoline, in tank carloads. We further find that this unjust discrimination shall be removed by applying to the present intrastate rates in Texas on the said classes and commodities, except casing-head (natural) gasoline, in tank carloads, the same surcharges as are and for the future may be contemporaneously maintained by respondents, in accordance with the findings in Fifteen Percent case, 1931, supra, on corresponding interstate traffic.

These findings are without prejudice to the right of the authorities of the State of Texas or of any other interested party to apply in the proper manner for a modification of our findings, and order if one is issued, as to any specified intrastate rate on the ground that the latter is not related to interstate rates in such a way as to contravene the provisions of the Interstate Commerce Act.

Our reasons for excepting casing-head gasoline are the same as those above expressed with respect to petroleum and its products for further manufacture in Oklahoma.

Part 12—Utah

The Public Utilities Commission of Utah refused to approve the surcharges on any intrastate traffic.

65 Nine carriers operating in Utah, including the principal railroads serving that State, on the basis of the tonnage handled in 1931 estimate that they would collect $192,129 additional annual revenue if the surcharges were added to the Utah intrastate rates.

The intrastate class rates applying between numerous points in that State are compared by respondents with rates for comparable distances based on the scale of class rates in Arizona Corporation Commission v. A. E. R.R. Co., 113 I.C.C. 52, hereinafter called the 14999 scale, plus the surcharge, for application between points in Arizona on the one hand and points in California and New Mexico and El Paso, Tex., on the other hand. Practically the same scale was prescribed in Portland Chamber of Commerce v. O. R.R. & N. Co., 21 I.C.C. 640, for application from Portland, Oreg., and Seattle and Tacoma, Wash., to interstate destinations in Washington, Oregon, Idaho, and Montana, and in Klamath County Chamber of Commerce v. S. P. Co., 74 I.C.C. 207, for interstate application from Portland and other Oregon points to destinations in southern Oregon and northern California and from central California jobbing points to the same destinations. In Utah Shippers Traffic Asso. v. Oregon S. L. R. Co., 147 I.C.C. 581, rates on the basis of the 14999 scale were prescribed for application from Salt Lake City, Utah, to destinations in Idaho, Montana, Oregon, and Washington. Generally speaking, the Utah class rates are lower than they would be if made on the basis of the 14999 scale.

The intrastate rates applying between points in Utah on brick, cement, sugar, salt, lime, petroleum products, beet pulp, and numerous other commodities of which there was a substantial movement both interstate and intrastate in Utah during 1931, are compared with corresponding interstate rates for similar hauls between points in Utah, Idaho, Wyoming, Montana, California, and Oregon. The Utah intrastate rates so compared are uniformly lower than the interstate rates.

The rates on coal from producing fields at Castle Gate, Sunnyside, and Thompson, Utah, to representative destinations in Utah are ex-

hibited by the Denver & Rio Grande Western Railroad Company. The average distances from the Castle Gate district mines to Provo, Salt Lake City, and Ogden, Utah, are 80.9, 125, and 162.2 miles, respectively. A comparison of the rates from Castle Gate to numerous destinations in Utah with rates from other western coal-shipping points in Colorado, Wyoming, and New Mexico to various interstate destinations shows that for distances up to 100 miles the Utah intrastate rates are in some instances slightly higher than the corresponding interstate rates, but for distances in excess of 100 miles the Utah State rates are uniformly lower. As an illustration, the rate
66 on lump coal from Castle Gate to Ogden, 152 miles, is $2.10 a ton, whereas from Walsenburg, Colo., to Castle Rock, Colo., 148 miles, the rate is $2.31, including the surcharge. This respondent states that there are no operating conditions from and to the Utah points which justify a lower level of rates on coal than from Walsenburg. It points out that under the present adjustment the Franklin Sugar Company, a large consumer of coal, operating a plant at Preston, Idaho, just north of the Utah-Idaho State line, is prejudiced because of the fact that it must pay the surcharge on interstate movements of coal, whereas certain Utah sugar factories with plants at Lewiston, Utah, just south of the State line, do not pay it.

The Utah Coal Producers Association, appearing in opposition to the surcharge, offered numerous exhibits showing rates on coal between various points within the State and their relation to rates based on the scale of rates prescribed in Holmes & Hallowell Co. v. G. N. Ry. Co., 69 I.C.C. 11, hereinafter referred to as the Holmes & Hallowell scale, for application on bituminous coal, in carloads, from Duluth, Minn., Superior, Wis., and certain points in North Dakota and South Dakota. The rates from the Castle Gate district to 21 points in Utah for an average distance of 174 miles approximate 151 percent of the Holmes & Hallowell scale. From this same origin group to destinations in Idaho, Montana, Oregon, Washington, and Nevada the rates on lump coal range from 92 to 123 percent of that same scale. In Western Coal Rates, 80 I.C.C. 383, the rates prescribed on lump coal from the Rock Springs-Kemmerer district in Wyoming to 10 destinations in Idaho average approximately 120 percent of the Holmes & Hallowell scale.

A number of retailers in coal with places of business at Provo, Salt Lake City, and Lehi, Utah, who have in the past shipped by rail, testified that the volume of their business is constantly on the decline. While a portion of this decrease is caused by the general depression, a large percentage of the loss is attributed to the fact that many trucking companies are buying coal at the mines and selling direct to the consumer. It is estimated that from 25 to 30 percent of the coal moving into Utah County is sold in that manner. They maintain that if the surcharge is authorized on shipments of coal between points within the State a still greater portion of the coal movement will be diverted to the trucking companies.

Evidence was submitted with respect to traffic in ores and concentrates and the rates thereon similar to that which was presented by Idaho and Montana protestants.

The Utah Traffic Shippers Association, an association of jobbers, wholesalers, retailers, fruit, vegetable, and grain growers, flour millers, brokers, and others, oppose any increase in the Utah intra-
67 state rates. They maintain that the present rates on commodities moving intrastate do not constitute any undue preference or prejudice as between persons or localities in interstate commerce, nor do they constitute any violation of section 13 of the act. They say that any increase in the freight rates, and especially those on short-haul traffic, will divert a considerable volume of tonnage to the trucks and thereby cause a reduction instead of an increase in the carriers' revenue.

A witness for the poultry producers testified that that industry cannot bear any additional burdens. They are large users of grain and concentrates, such as fish meal, dry milk, and mineral feeds, such as bone meal and crushed limestone. At present practically all of this traffic is being handled by the railroads.

A number of exhibits were offered by the Utah Traffic Shippers Association to support their position that the railroads operating within the State of Utah are exacting higher rates for the transportation of commodities in Utah intrastate traffic than are being exacted for the movement of similar commodities moving the same or lesser distances either in interstate commerce or on traffic from and to points in adjoining States. Reference is made to such commodities as brick, cereal beverages, corrugated cartons, packinghouse products, canned goods, sugar, and scrap iron. While the rates on the compared commodities from and to points within the State of Utah are for comparable distances as high as or higher than the rates on the same commodities from and to points in adjoining States, there is nothing in the record to show the circumstances and conditions under which the rates on the compared commodities were established. It is the view of this association that any increases in the freight rates on the commodities shipped by its members will operate to reduce rather than increase the carriers' revenue.

The Bingham & Garfield Railway Company, a class II carrier operating about 20 miles of line near Salt Lake City wholly within the State of Utah, presented no evidence, but in a petition filed at the hearing seeks permission to increase its joint and through intrastate rates by the surcharges, in the event the other carriers operating in Utah are required to increase their joint and through rates participated in by the petitioning carrier. It does not desire any increase in its local rates.

We find that in view of the surcharges which have become effective interstate in the freight rates on the classes and commodities here in question, under our findings in Fifteen Percent case, 1931, supra, respondents' intrastate rates in Utah on the same classes and com-

modities, to which no corresponding surcharges have been added, have resulted and will result in unjust discrimination against
68 interstate commerce, except in the case of the intrastate rates on ores and concentrates. We further find that this unjust discrimination shall be removed by applying to the present intrastate rates in Utah on the said classes and commodities, except ores and concentrates, the same surcharges as are and for the future may be contemporaneously maintained by respondents, in accordance with the findings in Fifteen Percent case, 1931, supra, on corresponding interstate traffic.

These findings are without prejudice to the right of the authorities of the State of Utah or of any other interested party to apply in the proper manner for a modification of our findings, and order if one is issued, as to any specified intrastate rate on the ground that it is not related to interstate rates in such a way as to contravene the provisions of the interstate commerce act.

The reasons for excepting ores and concentrates are those which were given in the discussion of the Idaho rates.

General

An order will be entered discontinuing Part 1—Arizona. Orders will also be entered in accordance with the foregoing findings, except where State commissions directly involved notify us on or before November 1, 1932, that they will promptly permit the increases herein required. If an order is necessary in any part, it will be issued on or immediately after the above date and require the establishment of the increased rates on short notice.

LEWIS, Commissioner, concurring:

In dealing with these cases we must recognize the fact that we face a railroad crisis so acute that the Government is called upon to loan money, not only to get the carriers through it, but to remove so far as possible a menace to financial, insurance, and fiduciary institutions which are heavy holders of the underlying securities of the carriers. The national well-being—directly, bank depositors, insurance policyholders, public institutions, and credit—has become deeply involved. While most States have cooperated with this commission in its effort to meet the situation by imposing, intrastate, the limited increases on certain traffic which we authorized in Ex parte No. 103, there are States which have not granted such emergency relief and others that have excepted commodities.

As to the first of the above groups, the reasoning and decree of the Supreme Court in Wisconsin R.R. Comm. v. C., B. & Q. R.R. Co., 257 U.S. 563, seems to be as applicable today as it was to a less acute situation in 1920. Beyond, however, the discrimination against interstate commerce—"a revenue case"—on which the issue is
69 joined in these proceedings, there are other considerations that, to my mind, deserve attention.

One State cannot, under present conditions, long remain on a surcharge plateau of rates while an adjoining and competitive State remains on a nonsurcharge level. States that have assumed the burden suffer impositions and injury if an adjoining State or States do not likewise assume it. Their relationships and groupings often established after long, costly litigation are broken; there is dislocation of competition between localities, persons, and commodities; violations of the law are created. If these States are not protected, the whole system of relief must eventually break down. Under the "marshaling plan" shippers who pay the surcharges are being taxed to maintain a common fund which is available to support all rail service, including that of shippers who are thus exempted from the burden. This is inequitable. It is not sufficient that a State set up the contention that its intrastate rates already are, in relation to the rates in other States or interstate, too high or disproportionate even without the surcharge. In the Wisconsin case the Supreme Court recognized the practicalities of a necessarily hurried adjustment of rates. Congress, in the law, provided means for relief of States from unlawful inequalities in rate structures. In at least one instance relief is being sought in a pending proceeding.

As to the second group, I concur in the findings in those instances where, in addition to material loss of revenue established of record, the exemption from the surcharge creates interstate-intrastate disruptions, discriminations, and violations of the nature previously outlined. But to go further is an undue and unwarranted invasion of State jurisdiction. The record conveys to my mind the strong impression that in a number of instances State commissions exercised a careful judgment, on the records before them, not unlike that which we exercised in considering probable diversion of traffic, substitutions, and the inability of certain industries and commodities to stand increases, or increases beyond a certain amount. The Supreme Court said in the Wisconsin case that the power to exercise unified control of intrastate and interstate commerce provided by the act of 1920 was only "to the extent of maintaining efficient regulation of interstate commerce"; that the "Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce and must leave appropriate discretion to the State authorities to deal with intrastate rates as between themselves on the general level which the Interstate Commerce Commission has found to be fair to interstate commerce." Evidently "the level" is not in all instances to be attained by identical increases.

70 In admonishing the carriers to make a study of their rate structures to ascertain if revenue could be further improved, we indicated in Ex parte 103 that in some instances reductions might contribute to that end. The Supreme Court in Florida v. United States, 282 U.S. 194, has held that an increase in rates does not ipso

facto mean an increase or conservation of revenue. The carriers themselves have been actively engaged in cutting and even slashing rates to hold traffic. They have recognized that there are denials of surcharges by State commissions that have not been without justification. For example, western carriers have not prosecuted their thirteenth-section case against Arizona; southern carriers have brought thirteenth-section proceedings to enforce the Ex parte No. 103 surcharges only against Kentucky, which declined any emergency relief; eastern carriers have not instituted proceedings in behalf of Ex parte No. 103 surcharges, although, as in the South, some States did not authorize surcharges on all the commodities which are authorized on interstate traffic. While we have sustained various commissions in their exception of furniture, oil, nonferrous metals, and some other commodities, such exceptions have been based on some ruling or decision of ours since our findings in Ex parte No. 103, or by some act of the carrier. This is hedging in the field of review and justification too closely.

I believe that there are additional instances in which we should not have attempted to set aside exceptions as to particular traffic made by State authorities.

ATTCHISON, Commissioner, dissenting:

I am unable to concur in the findings and order herein so far as they are adversary to the action taken by several States. (1) The proceeding which eventuated in our conclusions in Fifteen Percent case, 1931, supra, was in essence an application by the rail carriers, summary and general in form, under section 6 (3) of the act for authority to file schedules of rates more simple than allowable under the rules governing such publications, and upon a shorter period of notice than that generally required by the law. The proceedings also took on the aspects of a preliminary administrative inquiry as to whether such schedules should be suspended, if filed. In these respects the proceeding followed familiar lines of practice in general rate increase applications. The reasonableness of the interstate rates involved could not be determined in such a character of proceeding; the Commission went to some pains to make clear that it in nowise was determining the question of reasonableness under section 1 of the act. No such finding is now made in this proceeding; in the light of the theory of the carriers (who are virtually, if not in
71 form, complainants against the States) as voiced upon argument, no such finding can here be made within the scope of the issue presented. But a determination of the reasonableness of the interstate rates is a necessary prerequisite to the finding of prejudice in respect of State rates against interstate rates, and lacking such finding in this or any prior proceeding, jurisdiction is lacking to make a finding striking down the law of the State.

(2) Beyond this jurisdictional obstacle, the record is not persuasive that the increases in the State rates now required will result in

any added revenues. The report discloses the highly speculative character of the testimony adduced by the carriers. Mathematical calculations as to what revenues would be if the traffic of recent years continued to move in past volume have little if any probative force, in the light of the conditions of the day. Calif. Growers' & Shippers' Protective League v. S. P. Co., 185 I.C.C. 299. Particularly is this true when the interstate rates before us are by their terms limited to March 31, 1933, and have but a few months to run.

(3) By and large, the action of the State commissions in exempting the traffic under consideration from the application of the surcharges appears to be in harmony with our own action in surveying the field to determine what interstate traffic would be able to bear temporary increases, and our refusal to permit general increases in respect of innumerable commodities as to which it appeared that increases would diminish revenue by diverting traffic or blocking its movement by rail. Similar latitude in discretion should be accorded to the authorities of the States. With the exercise of their discretion we may not interfere, unless the case of unlawful transgression of the interstate field is clear. The action of the State commissions here vacated is at least as likely to conserve the revenues of the rail carriers as that prescribed by the majority, and in such circumstances the presumption of validity of the State action with which we start cannot be said to be overcome.

The proceeding should be discontinued in all its parts.

BRAINERD, Commissioner, dissenting:

I am of the opinion that the record is insufficient to justify the conclusions of the majority, to warrant the exercise of the power asserted, or to sustain the proposed orders prescribing the level of intrastate rates.

TATE, Commissioner, dissenting in part:

I concur in so much of the report of the majority herein as declines, in the instances so covered, to attempt to compel the State commissions to add the so-called surcharges to the rates charged for
72 freight traffic. I dissent from every portion of the report which seeks to compel the addition of such surcharges. In cases of this kind the commission may, when it is proper, apparently act from one or both of the following reasons, to wit: That there is an unjust discrimination or undue prejudice created against interstate commerce; or that, it being a revenue case, the intrastate rates are not contributing their proper proportion to the revenue of carriers, so casting a burden on interstate commerce.

The report of the majority in this case has little to say about the first character of cases, but it is practically stated in the report that, if this were only that kind of case, this commission would first have to find (and I assume this means upon a sufficient record) that the interstate rate was a reasonable rate. I do not believe this commis-

sion has ever had a record upon which the rates resulting from the addition of surcharges could be held to be reasonable rates. Insofar as the case may be said to be a revenue case, I do not believe the carriers have made a record which carries the burden of showing that the revenues would really be increased by the addition of these surcharges. For me, it is not sufficient merely to show that, if the same amount of traffic was carried by rail carriers with the surcharge added as was carried without the surcharge, greater revenue would result. This, of course, would be obvious, if that were all. The record is at least in equipoise as to whether there have been and would be, for the future, greater revenues resulting from the additional surcharges than would result if the surcharges were not imposed. The report of the majority cites various general-revenue cases where there have been general advances or reductions. I do not regard them as in point here. The commission unanimously denied the 15 percent increase which was sought. Had the commission added one-half of 1 percent, or 1 percent, or 1.5 percent, or any other conceivable general percentage, then I think those cases would have been in point, in that the various States were permitted to assume the burden of showing where any particular form of traffic or commodities should not be made the subject of the general advance. But this the commission did not do in this case. It undertook, upon what I have considered an insufficient record, to pick out in advance certain commodities upon which alone it would allow rates to go in without suspension; and even as to those so picked out it did not allow a uniform surcharge, but allowed some three or four different amounts of surcharge.

I do not believe, in a case of this kind, that the burden can be said to be shifted to the States to take an article out of the rule, when the commission itself has seen fit not to apply a general rule, but
73 to choose, itself, certain articles as to which a surcharge is to apply, and then to fix a different surcharge for different articles in the chosen list. I see nothing to take, in this kind of a proceeding, the burden off the carriers to justify the increase in rates, which is the general rule.

Commissioners FARRELL and MAHAFFIE concur in the result.

74 ORDER

At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 29th day of September, A.D. 1932.

No. 25135

Increases in intrastate freight rates—Part 1, Arizona

The Commission having on the date hereof made and filed a report containing its findings of fact and conclusions thereon in the above-

entitled proceeding, which said report is hereby referred to and made a part hereof:

It is ordered, That said proceeding, insofar as it relates to rates in Arizona, be, and it is hereby, discontinued.

By the commission.

[SEAL.] GEORGE B. MCGINTY,
Secretary.

75 *Exhibit B attached to bill of complaint, being copy of Commission's report in Ex parte 103, 15 percent case, 1931, and appendix thereto (178 I.C.C. 539)*

17221

Interstate Commerce Commission

Fifteen Percent case, 1931

Ex Parte No. 103

In the matter of increases in freight rates and charges

Submitted September 30, 1931. Decided October 16, 1931

Application of the rail carriers in the United States for waiver of rules governing publication of schedules so as to permit filing upon short notice of blanket supplements effecting a general increase in freight charges of 15 percent, denied. Suggestions made, in consideration of existing circumstances and in the interest of the preservation of an adequate system of transportation, for specific increases in rates upon designated commodities during a limited period, conditioned upon the submission and approval of arrangements between the carriers for the pooling of the revenue accruing from the suggested increases so as primarily to enable them to meet their fixed interest payments as they mature.

Clyde Brown, Henry Wolf Birkle, J. J. Cornwell, H. Fitzpatrick, W. W. Meyer, M. Carter Hall, Chas. R. Webber, and Earle C. Calhoun for carriers in eastern group; Henry J. Hart for Bangor & Aroostook Railroad Company; W. H. T. Loyall, John C. Donnally, and Fred N. Oliver for Virginian Railway Company; H. T. Newcomb for Delaware & Hudson Railroad, Greenwich & Johnsonville Railway, Schoharie Valley Railway, and Cooperstown & Charlotte Valley Railway; G. F. Snyder for Canadian Pacific Railway Company (lines in Maine and Vermont), Spokane International Railway Company, and Aroostook Valley Railroad Company; Charles H. Blatchford for Maine Central Railroad Company and Portland Terminal Company; W. A. Cole for Boston & Maine Railroad; Eugene S. Williams for Western Maryland Railway Company; William L. Kinter for Reading Company; Daniel Willard, Jr., and E. L. Beach

for Baltimore & Ohio Railroad Company; W. S. Jenney for Delaware, Lackawanna & Western Railroad Company; H. A. Taylor and M. B. Pierce for Erie Railroad Company, Chicago & Erie Railroad Company, New York, Susquehanna & Western Railroad Company; Wilkes-Barre & Eastern Railroad Company, New Jersey & New York Railroad Company, and Bath & Hammondsport Railroad Company; S. R. Merriam for Pere Marquette Railway; W. N. McGehee, Frank W. Gwathmey, E. A. Smith, and William A. Northcutt for car-
76 riers in southern group; W. F. Dickinson, R. V. Fletcher, Ben C. Dey, J. R. Bell, D. F. Lyons, M. L. Countryman, Jr., M. G. Roberts, Walter McFarland, J. M. Souby, Leslie Craven, P. F. Gault, J. N. Davis, L. H. Strasser, and H. H. Larimore for carriers in western group, also certain carriers by water; H. E. McGee and George T. Atkins for Missouri-Kansas-Texas lines; A. J. Laughon, O. P. Kellogg, F. N. Hicks, and M. L. Bluhm for Chicago, Milwaukee, St. Paul & Pacific Railroad Company; A. S. Halsted, E. E. Bennett, E. C. Renwick, Charles A. Root, and W. Hal Farr for Union Pacific lines; C. D. Bordelon and Harry R. Jones for Gulf Coast Lines, and International-Great Northern; B. F. Batts and J. C. Winfield for St. Louis Southwestern Railway lines; Fred L. Wallace and L. M. Hogsett for Forth Worth & Denver City Railway Company; S. G. Reed for Texas & New Orleans Railroad; F. R. Newman for Minneapolis, St. Paul & Sault Ste. Marie Railway Company; W. H. Bremner for Minneapolis & St. Louis Railroad Company; James E. Taussig and N. S. Brown for Wabash Railway Company; Ben B. Cain, and Clarence A. Miller for Christie & Eastern Railway Company, Sabine & Neches Valley Railway Company, and LaSalle & Bureau County Railway Company; W. E. Coman, F. A. Cleveland, Thomas H. Maguire, and R. E. Smith for Northern Pacific Railway Company; J. E. Gorman, A. Mackenzie, and George E. Schnitzer for Chicago, Rock Island & Pacific Railway Company, and Chicago, Rock Island & Gulf Railway Company; B. S. Atkinson, Sr., for Louisiana & Arkansas Railway Company and Louisiana, Arkansas & Texas Railway Company; W. G. Baird for Chicago & Alton Railroad; Thomas Balmer for Great Northern Railway Company; Alfred A. Hampson and Robert M. Kerr for Southern Pacific Company; Robert Thompson, J. A. Lynch, and C. M. Spence for Texas & Pacific Railway Company and subsidiary lines; C. D. Cass for American Electric Railway Association.

Ralph R. Bradley for Cincinnati & Lake Erie Railroad Company, Indiana Railroad, Indiana Service Corporation, Public Service Corporation, Public Service Company of Indiana, Northern Indiana Power Company, Fort Wayne-Lima Railroad Company, Chicago, North Shore & Milwaukee Railroad Company, Chicago, South Shore & South Bend Railroad, and Chicago, Aurora & Elgin Railroad Company; A. R. Yarborough for Alabama Central Railway, Kanawha Central Railway Company, Stroud's Creek & Muddlety Railroad Company, and Winifrede Railway Company; William S. Bronson and W. W. Ahrens for Virginia Central Railway; C. F. Taplin

and William S. Bronson for Pittsburgh & West Virginia Railway Company; A. E. Wallace for Duluth, South Shore & Atlantic Railway Company; Guy V. Shoup and J. R. Bell for Visalia Electric Railroad Company, Fresno Traction Company, and Peninsular Railway Company; Arthur Van Meter for Monongahela Railway Company and Pittsburgh, Chartiers & Youghiogheny Railway Company; James W. Carmalt for Pacific & Idaho Northern Railway Company; Frederick E. Brown for Manufacturers Railway Company and St. Louis & O'Fallon Railway Company; Ben B. Cain and Clarence A. Miller for various short lines; J. B. Dempsey for West Virginia Midland Railway Company; L. E. Earlywein for certain electric-railway carriers in C.F.A. territory; William T. Faricy for Minnesota Transfer Railway Company; W. L. Meyers for certain electric railroads; William Jay Turner and George P. Orlady for Lehigh & New England Railroad Company; W. H. Weeks for Kansas City Connecting Railroad Company; A. [illegible] Morris for Texas Electric Railway; S. P. Collier for Winston-Salem Southbound Railway Company; J. S. Babbitt for Sand Springs Railway Company; Frank Lyon for Luchenbach Steamship Company, Luckenbach Gulf Steamship Company, and American Hawaiian Steamship Company; J. C. Gillespie for Nicholson Universal Steamship Company; Ralph S. Fowler for Gulf Pacific Line, Limited, and Swayne & Hoyt, Limited; Frank W. Sullivan for Great Lakes Transit Corporation; C. E. Dempsey for Cleveland & Buffalo Transit Company; A. R. Sheff for Minnesota-Atlantic Transit Company; George B. Wright for Detroit & Cleveland Navigation Company.

Hughes, Schurman & Dwight, Charles E. Hughes, Jr., Fred N. Oliver, and Frederick W. R. Pride for security holders' committee on the railroad emergency; Root, Clark & Buckner, Grenville Clark, Henry J. Friendly, and Jeremiah M. Evarts for emergency committee on railroad investments of life-insurance companies and mutual savings banks.

John E. Benton and Clyde S. Bailey for legal committee of Western States' commissions and certain other State commissions; Joseph E. Warner and Donald C. Starr for Commonwealth of Massachusetts; Ralph W. Davis for State of New Hampshire; John A. Bernhard for Board of Public Utilities Commissioners of New Jersey; L. J. Dorr for New York State Department of Agriculture and Markets; J. W. Herrold, Gilbert Bettman, and T. J. Herbert for Public Utilities Commission of Ohio; G. H. Shafer, J. Paul Kuhn, and C. W. Hadley for Illinois Commerce Commission; Hugh E. Wilson, F. M. Wintermute, R. H. Dunn, and K. F. Clardy for Michigan Public Utilities Commission; John C. Goddin for State of Virginia, Department of Agriculture; H. E. Ketner for Corporation Commission of Virginia; W. G. Womble for North Carolina Corporation Commission; W. L. Glaze for South Carolina State Highway Department; E. M. Price for Georgia Public Service Commission; J. W. Cammack, Moses R. Glenn, Oscar Vest, Thos. H. Lauhon, Douglas C. Vest, M. B. Holifield, Chas. Satterfield,

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and L. F. Orr for Railroad Commission of Kentucky and Commonwealth of Kentucky; W. F. Barry, Jr., J. O. Hendley, and John L. Nealy, Sr., for State of Tennessee; T. T. Turnbull, Fred Pettijohn, and J. H. Tench for Florida Railroad Commission; Frank E. Harrison, Jr., for State Road Department of Florida, Board of Commissioners of State Institutions, Floridin County, and City of Tallahassee, Fla.; Geo. Butler and M. C. Moore for Mississippi Railroad Commission; Amos A. Betts, Loren Vaughn, E. A. Howe, L. G. Reif, and Charles E. Blaine for Arizona Corporation Commission; J. F. Shaughnessy for Nevada Public Service Commission; J. M. Devers for Oregon State Highway Commission; C. M. Thomas and A. F. Harvey for Public Utilities Commission of Oregon; E. E. Corfman for Public Utilities Commission of Utah; F. Chatterton for Public Service Commission of Wyoming; John H. Dunbar, C. R. Lonergan, John C. Hurspool, and Fred K. Baker for Washington Department of Public Works; Francis A. Silver for Board of Railroad Commissioners of Montana; J. D. Rigney, M. Reese Hattabaugh, Bert L. Penn, Maurice H. Greene, and Fred J. Babcock for Public Utilities Commission of Idaho; Arthur T. George, Ira H. Rowell, Roderick B. Cassidy, and W. P. Geary for California Railroad Commission; C. A. Ross, Hugh LaMaster, and C. A. Sorenson for State of Nebraska; Clarence L. Ireland for State of Colorado; Henry N. Benson, John F. Bonner, O. P. B. Jacobson, Frank W. Matson, Christian J. Laurisch, and L. R. Bitney for State of Minnesota; and Minnesota Railroad and Warehouse Commission; V. E. Smart for Missouri Public Service Commission; E. H. Hatcher, C. W. Steiger, I. C. Peterson, and Wylie McNeal for Public Service Commission of Kansas; Philip H. Porter for Public Service Commission of Wisconsin, and various Wisconsin industries; William F. Ehmann for Public Service Commission of Wisconsin; Herman L. Bode, J. J. Murphy, and D. L. Kelly for State of South Dakota; J. H. Henderson, C. B. Ellis, and W. F. Parsons for Board of Railroad Commissioners of Iowa; Ben C. Larkin, C. W. McDonnell, Fay Harding, E. M. Hendricks, F. P. Aughnay, and Rex E. Willard for Board of Railroad Commissioners of North Dakota; Reece Caudle, L. R. Wood, and A. D. Beals for Arkansas Railroad Commission; C. B. Bee and H. H. Dunlap, Jr., for Traffic Department of Oklahoma Corporation Commission.

James M. Curley, mayor, for city of Boston, Mass.: Samuel Silverman and Johnson B. Campbell for Boston, Mass., Port Authority; W. H. Chandler for Merchant's Association of New York, N. Y., and New York State Chamber of Commerce with respect to port
79 differentials; Julius Henry Cohen for Port of New York Authority; T. C. Crouch for Richmond, Va., Chamber of Commerce; Frank S. Davis for Maritime Association of Boston, Mass., Chamber of Commerce; William H. Day for Boston, Mass., Chamber of Commerce, New England Traffic League, and New Bedford, Mass., Board of Commerce; Charles J. Fagg for Newark, N. J., Chamber of Commerce, and New Jersey traffic advisory committee;

A. H. Ferguson for New Bedford, Mass., Board of Commerce; John Philip Hill for East Baltimore, Md., Business Men's Association; Charles R. Seal for Baltimore, Md., Association of Commerce; George S. Hobbs for Maine State Chamber of Commerce and Agricultural League; A. P. Lane for Millinocket, Me., Chamber of Commerce and Great Northern Paper Company; Donald O. Moore for Pittsburgh, Pa., Chamber of Commerce; C. M. Mark for Newport News, Va., Chamber of Commerce; M. F. Price for Manufacturing Association of Connecticut, and Hartford Chamber of Commerce; Claude H. Swain for Concord, N. H., Chamber of Commerce; S. H. Williams for Philadelphia, Pa., Chamber of Commerce; Frederick M. Varah for Syracuse, N. Y., Chamber of Commerce; Thomas M. Woodward and T. D. Geoghegan for Southwest Virginia, Incorporated; Howard H. Waldron for Portland, Me., Chamber of Commerce; Andrew H. Brown for Cleveland, Ohio, Chamber of Commerce; A. J. Christiansen for Moline, Ill., Association of Commerce and Illinois District Traffic League; John C. Graham for Jackson, Mich., Traffic Bureau; H. D. Rhodehouse, A. C. Graham, J. C. Argetsinger, and J. V. McMahon for Youngstown, Ohio, Chamber of Commerce; A. B. Coapstick for Indiana State Chamber of Commerce and Indiana Division National Association of Natural Stone Producers; Fred E. Young for South Bend, Ind., Chamber of Commerce; O. B. Eddy for Peoria, Ill., Association of Commerce and Illinois District Traffic League; Samuel Herndon for Cincinnati, Ohio, Chamber of Commerce; H. A. Hollopeter for Terre Haute, Ind., manufacturers; C. E. Hochstedler for Chicago, Ill., Association of Commerce; Herbert J. Campbell and J. S. Brown for Chicago, Ill., Board of Trade; Clare B. Tefft for Toledo, Ohio, Chamber of Commerce; John A. Forshey for Toledo, Ohio, Board of Trade; Thomas E. Grady and John A. O'Rourke for Miami, Fla., Rate & Traffic Board, Broward Port Authority, Broward County Rate & Traffic Board; T. C. Elliott for Interior Florida Traffic Bureau and Florida League of Municipalities; E. J. Cosgrove, Jr., for city of St. Petersburg and Pinellas County, Fla.; Joseph H. Donnell for Tampa, Fla., Chamber of Commerce, Tampa Traffic Association, and Florida League of Municipalities; A. F. Vandergrift for Louisville, Ky., Board of Trade; T. M. Henderson for Traffic Bureau of Nashville, Tenn.; H. A. Hopkins for Anniston, Ala., Traffic Bureau and United Chambers of Commerce; C. E. Jones for Birmingham, Ala., Traffic Association; M. M. Caskie and J. D. Oliver for Montgomery, Ala., Chamber of Commerce and Alabama Farm Bureau Federation; J. O. Cromwell for Macon, Ga., Chamber of Commerce; Thos. J. Burke for Charleston, S. C., Traffic Bureau and Southern Traffic League; Edgar Moulton for New Orleans, La., Joint Traffic Bureau; J. C. Murray for Little Rock, Ark., Chamber of Commerce and Arkansas Cotton Trade Association; Homer J. Conley for Fort Smith, Ark., Freight Bureau; I. B. Bentley for Oklahoma City, Okla., Jobbers & Manufacturers' Association, and Oklahoma City Chamber of Commerce; Ed P. Byars

for Fort Worth, Tex., Chamber of Commerce, Fort Worth Freight Bureau, and Texas Wholesale Fruit & Vegetable Dealers' Association; E. R. Tanner for New Mexico State Farm Bureau, El Paso, Tex., Freight Bureau, and El Paso Chamber of Commerce; E. R. Tanner and D. H. Berry for West Texas Chamber of Commerce and San Angelo Board of City Development; S. J. Cole for Amarillo, Tex., Chamber of Commerce, Amarillo Board of City Development, Chamber of Commerce of Levelland, Canadian, Sherman County, Cattle County, Hereford, and Clarendon, Tex.; J. W. Chatham for East Texas Chamber of Commerce; Dudley B. Foy for Wichita Falls, Tex., Chamber of Commerce, and Wichita Falls Petroleum Traffic Association; U. S. Pawkett for San Antonio, Tex., Freight Bureau, San Antonio Chamber of Commerce, Winter Garden Chamber of Commerce, and South Texas Chamber of Commerce; A. L. Reed for Dallas, Tex., Chamber of Commerce; L. M. Shepardson for Waco, Tex., Chamber of Commerce; E. H. Thornton for Chamber of Commerce & Cotton Exchange of Galveston, and Texas City, Tex., Board of Trade; A. E. Hueneryager for Zion, Ill., Institutions and Industries, Incorporated; John R. Davy for Sheboygan, Wis., Association of Commerce; L. E. Luth for Winona Association of Commerce, and LaCrosse, Wis., Chamber of Commerce; C. C. Campbell for Oshkosh, Wis., Chamber of Commerce; H. W. Gehrke for Milwaukee, Wis., Association of Commerce; Herman Mueller for St. Paul, Minn., Association of Commerce, and shippers of St. Paul, Minn.; Fred S. Keiser for Duluth, Minn., Chamber of Commerce; Chas. H. Winslow for Kalamazoo, Mich., Chamber of Commerce; Leo E. Golden for Grand Rapids, Mich, Association of Commerce, Grand Rapids Furniture Manufacturers Association, Grand Rapids Coal Merchants Exchange, Burlington, Iowa, Shippers Association, Tell City, Ind., Traffic Association, Hannibal, Mo., Traffic Association, National Retail Furniture Association, and Iowa Malleable Iron Company; Geo. M. Cummins for Davenport, Iowa, Chamber of Commerce; W. H. Fitzpatrick for St. Joseph, Mo., Chamber of Commerce; S. W. W. Carr for Aberdeen, S. Dak., Chamber
81 of Commerce; H. M. Rickards for Hutchinson, Kans., Chamber of Commerce; George E. Hogle for Hutchinson, Kans., Board of Trade Association; A. M. Corp for Wichita, Kans., Chamber of Commerce, Kansas Chamber of Commerce, and Wichita Union Stock Yards Company; C. F. Real for Topeka, Kans., Chamber of Commerce; F. P. Willette for Atchison, Kans., Chamber of Commerce; H. M. Hancock for Salina, Kans., Chamber of Commerce; H. R. Brashear for Los Angeles, Calif., Chamber of Commerce; Hal Remington for San Francisco, Calif., Chamber of Commerce; Thomas S. Loutitt and J. C. Sommers for Stockton, Calif., Chamber of Commerce; Edwin G. Wilcox for Oakland, Calif., Chamber of Commerce; E. H. Walker for Reno, Nev., Chamber of Commerce; J. H. Tedrow for Kansas City, Mo., Chamber of Commerce and various industries at Kansas City.

Luther M. Walter, R. C. Fulbright, W. J. Mathey, R. W. Poteet, Chas. R. Seal, H. J. Wagner, W. H. Chandler, W. H. Day, and Herman Mueller for National Industrial Traffic League; Henry J. Balzer and Russell G. Stidolph for National Traffic Association; Milton P. Bauman for New Jersey traffic advisory committee, and New Jersey Industrial Traffic League; William J. Mathey for Shippers Conference of Greater New York; G. Coe Farrier for Allied Commercial Bodies of Philadelphia; J. M. Davison for commercial traffic managers of Philadelphia; J. J. Cummings for New Hampshire Manufacturers' Association; Morris W. Ford and John J. Hickey for Manufacturers Association of Connecticut, Incorporated; Morgan Richards for Selma, Ala., Traffic Bureau; Harry T. Moore and E. L. Hart for Atlanta Freight Bureau; Charles E. Cotterill, Joseph Hopkins, and William Ward, Jr., for Southern Traffic League; W. B. Kreuger for Piedmont Southern Freight Bureau; I. M. Bailey and W. S. Creighton for North Carolina Traffic League; H. J. Wagner and H. V. C. Wade for Norfolk Port Traffic Commission; J. B. Jones for Southside Virginia Just Freight Rate Association; H. E. Manghum for Virginia Shippers' Association; F. C. Hillyer for Jacksonville, Fla., Traffic Bureau, Brunswick, Ga., Traffic Bureau, United States Fisheries Association, Cast Stone Institute, Canadian Paint, Oil & Varnish Association, Naval Stores Industry of South Atlantic States, McLaren Rubber Company, and certain rice mills and rice producers; Geo. M. Cummins for Illinois District Traffic League; R. J. Dellinger for Western Stoneware Company, and Illinois District Traffic League; Geo. M. Cummins and L. E. Behrens for Muscatine Shippers Association; Fytte & Clarke, David R. Clarke, James L. Donnelly, and R. I. Pierce for Illinois Manufacturers Asciation; C. E. Elerick for Cadillac, Mich., Manufacturers Exchange; R. I. Pierce for Manufacturers Association of Chicago Heights; Frank Leffingwell for Southwestern Industrial Traffic League and
82 Texas Industrial Traffic League; F. E. Potts for Helena, Ark., Traffic Bureau; W. A. Curtin for Portland Traffic & Transportation Association; Bert L. Baker for Wenatchee Valley Traffic Association; Ivan L. Plette, for Yakima Valley Traffic & Credit Association; William P. Ellis for Yakima Valley Traffic & Credit Association, Wenatchee Valley Traffic Association, Hood River Traffic Association, Rogue River Valley Traffic Association, and Fruit Growers' League; G. C. Early, J. S. Earley, and E. C. Fanbert for Utah Shippers Traffic Association; Frank M. Hill for Fresno Traffic Association; Wm. C. McCulloch for Portland, Oreg., Traffic & Transportation Association.

R. C. Allen for Lake Superior Iron Ore Association; E. S. Ballard for Lake Superior Iron Ore Association; C. T. Bradford for International Harvester Company and Wisconsin Steel Company; William W. Collin, Jr., for Jones & Laughlin Steel Corporation; E. M. Cole for American Cast Iron Pipe Company, Alabama Iron & Steel Shippers Conference, and Cast Iron Pipe Committee; J. M. Davison

for American Pulley Company, Moore & White Company, Bond Foundry & Machine Company, Standard Pressed Steel Company, T. B. Woods Sons Company, and Rogersford Foundry & Machine Company; E. O. Foubert for Pacific States Cast Iron Pipe Company of Provo, Utah; W. J. Hammond for Inland Steel Company; J. H. Hiltner for United States Pipe & Foundry Company; J. C. Huntting for American Chain Company, Incorporated, and associate companies; W. B. Lewis for Sloss Sheffield Steel & Iron Company; F. M. Manson for Lukens Steel Company; Roy A. McCaffrey for United States Pipe & Foundry Company; J. D. Oliver and A. J. Ribe for Alabama Iron & Steel Shippers Conference, Southern Association of Stone Manufacturers, Birmingham Slag Company, and Montgomery Gravel Company, and others; Thaxton Richardson for Carolina Steel & Iron Company; Edwing H. Scott for Andrews Steel Company, Newport Rolling Mill Company, Globe Iron Roofing & Corrugating Company, and Hardy Burlingham Coal Company; A. B. Tanner for Lake Superior Iron Ore Association; E. E. Williamson for Andrews Steel Company, Newport Rolling Mill Company, Globe Iron Roofing & Corrugating Company, and Hardy Burlingham Coal Company.

H. O. Berger for Western Washington log shippers; Frank Carnahan for Southern Hardwood Traffic Association and affiliated companies, Wilson Compton for National Lumber Manufacturers' Association; Clapp, Elmquist, Briggs, Gilbert, Macartney for Weyerhaeuser interests; Fayette B. Dow for American Veneer Package Association and Standard Container Manufacturers' Association; Roy H. Dahlberg for Edham Shingle Company; J. A. Edgecumbe for Edham Shingle Company; R. C. Fulbright for
83 Southern Pine Association, Phelps Dodge Corporation, and Calumet & Arizona Mining Company; Hugh A. Gillis for "Western Pine Manufacturers" Association; R. J. Henderson for National Pole & Treating Company; Irwin Huseby for Northwestern Lumbermen's Association; A. Larsson for California Pine Box Distributors, California Redwood Association, California White & Sugar Pine Manufacturers, Association, Red River Lumber Company, American Box Company, and other pine producers in southern Oregon and California; A. G. T. Moore for Southern Pine Association; William C. McCulloch and William B. Adams for West Coast Lumbermen's Association, Portland Traffic & Transportation Association, Red River Lumber Company, California Lumbermen's Association, California White & Sugar Pine Association, McCloud River Lumber Company, and California Pine Box Distributors; J. V. Norman for Southern Hardwood Traffic Association, Property Owners Committee, and West Kentucky Coal Bureau; Walter A. Powers for Main Lumbermen & Land Owners' Association; H. N. Proebstel and Wm. B. Greeley for West Coast Lumbermen's Association; J. H. Townsend for Southern Hardwood Traffic Association, and Hardwood Manufacturing Institute; W. W. Weller for Weyer-

haeuser Timber Company; S. J. Wettrick for western lumber interests and North Pacific Millers Association.

A. S. Boden for Western Pennsylvania Coal Traffic Bureau; Ernest S. Ballard and D. F. Hurd for Ohio Lake Cargo Coal Rate Committee, and Ohio Coal Producers Freight Rate Committee; C. B. Cardy and L. F. Malum for Springfield, Ill., Coal Traffic Bureau; Joseph O'Toole and Ira C. Cochran for various coal associations; William B. Faulkner for Donner-Hanna Coke Corporation; August G. Gutheim for Central Pennsylvania Coal Producers Association, Western Pennsylvania Coal Traffic Bureau, C. Reiss Coal Company, and Milwaukee Western Fuel Company; J. F. Graves for Consolidated Coal Company; T. T. Harkrader for American Tobacco Company; Arthur Hale for Coal Exporters Association of United States; John J. Hickey for Anthracite Coal Operators Association and Manufacturers Association of Connecticut, Incorporated; S. C. Higgins for New River Coal Operators' Association; Stanley B. Houck for Twin City Coal Exchange, Incorporated; C. P. Hoy for Fifth & Ninth Districts Coal Traffic Bureau; W. A. Jones for Central Pennsylvania Coal Producers Association; Kirkland, Fleming, Green & Martin for Chicago Coal Merchants Association; Wesley E. Keller for Northwestern Retail Coal Dealers' Association; A. M. Liveright for Central Pennsylvania Coal Producers' Association, and others; John C. Ryan for Coal Merchants Educational Bureau; F. O. Sandstrom for Colorado & New
84 Mexico Coal Operators' Association; Fred H. Sturm for Montana Commercial Coal Operators, Anaconda Copper Mining & Coal Department, Bair Collins Company, Jeffries Coal Mining Company, Montana Coal & Iron Company, and Roundup Coal Mining Company; C. E. Warner and H. J. Goudelock for Midwest Coal Traffic Bureau; W. Y. Wildman for Illinois Coal Traffic Bureau.

Michael J. Anuta for Menominee Chamber of Commerce, Marinette Industrial Board, and Badger Paper Mills, Incorporated; J. E. Bryan and C. R. Hillyer for Wisconsin Paper & Pulp Manufacturers Traffic Association; W. B. Dalton for Nekoosa Edwards Paper Company; Charles E. Bell and C. C. Furgason for West Virginia Pulp & Paper Company; Laurence F. Daspit for Brown Paper Mill Company, Incorporated; James F. Doughterty for Michigan Paper Mills Traffic Association; F. L. Grady for Mead Paperboard Corporation; R. J. Henderson for Minnesota & Ontario Paper Company; F. M. Ives for National Association of Cotton Manufacturers; J. H. Kruger for Watab Paper Company; H. A. Manning for Atlanta Paper Company; Andrew P. Lane for Great Northern Paper Company, St. Croix Paper Company, Madison, Me., Chamber of Commerce, and Millinocket, Me., Chamber of Commerce; Parker McCollester and Lord, Day & Lord for American Newspaper Publishers Association, Publishers Association of New York City, and American Zinc Institute; William J. Mathey for American Newspaper Publishers Association; O. J. McSwain for Albemarle Paper

Manufacturing Company, Albemarle Chesapeake Company, and Chesapeake Corporation; John J. Seid for Pacific Pulp & Paper Traffic Association, and Pacific Coast Association of Pulp & Paper Manufacturers; Sheldon E. Wardwell and Andrew P. Lane for Great Northern Paper Company, St. Croix Paper Company, Madison Chamber of Commerce, and Millinocket, Me., Chamber of Commerce; F. M. Ives and C. L. Whittemore for New England Paper & Pulp Traffic Association; W. N. Webb for Celotex Company.

Edson Abel for California Farm Bureau Federation; Charles O. Busick for California State Grange; Charles E. Blaine for American National Livestock Association and Apache Powder Company; E. S. Briggs for American Fruit & Vegetable Shippers Association; William C. Bewley for Georgia Peach Growers Exchange; George C. Conn for Fruit Industries, Limited; Edw. G. Davies for fruit and vegetable shippers of Mississippi Valley; H. A. Davis for Boston Wool Trade Association; A. H. Priest, Dayton Moses, and H. D. Driscoll for southwestern livestock interests; Wm. B. Daly for Kroger Grocery & Baking Company; J. S. Earley for Utah State Beekeepers Association, Utah Manufacturers Association, Utah Horticultural Association, Utah State Farm Bureau, Utah Poul-
85 try Producers Cooperative Association, and Ogden Grain Exchange; E. J. Forman for Los Angeles Grain Exchange; Arthur M. Geary for Farm Rate Council, North Pacific Grain Growers, Incorporated, Eastern Oregon Wheat League, and Northwestern Livestock Shippers Traffic League; T. D. Geohegan for West Virginia Live Stock Growers & Shippers, and R. W. Burch, Incorporated; R. M. Gililland for American Wholesale Grocer's Association, Virginia State Horticultural Society, and West Virginia Horticultural Society; C. O. Cornwell, George E. Farrand, and Karl D. Loos for California Citrus League; Dow, Crane & Lohnes for Joint Council of International Apple Association, and other fruit interests; C. R. Hillyer and Waldo P. Johnson for Live Poultry Shippers Association; S. T. Henson for Feed Manufacturers' Traffic Committee; H. R. Higgins for Dried Fruit Association of California; Donald Kirkpatrick for American Farm Bureau Federation; McKinley Huntington for Oregon Turkey Growers; Geo. C. Lambert for various grain cooperatives; Slaughter Linthicum for Thompson-Weinman & Company, Incorporated, and Southeastern Peanut Association; J. H. Mercer for Kansas Live Stock Association; C. B. Moore, Robert M. Barker, and Hal F. Wiggins for Western Growers Protective Association of California & Arizona; C. R. Marshall and J. Curtis Robinson for Growers & Shippers League of Florida; F. R. Marshall, H. W. Prickett, and Milton H. Love for National Wool-growers Association; Robert Mayer and A. J. Stone for Dallas Cotton Exchange; John E. McCurdy for Poultry Producers of Central California; Wm. J. Maloney for Corn Exchange; Allan P. Matthew, John O. Moran, F. W. Mielke, J. Richard Townsend, and McCutchen, Olney, Mannon & Greene for California Growers' & Shippers' Protective League; F. H. Nesmith

for Ralston Purina Company; O. E. Nelson for Denver Alfalfa Milling & Products Company, Lamar Alfalfa Milling Co., Holly Alfalfa Milling Company, and Lamar Chamber of Commerce; Thos. O'Neill for California Vegetable Union; Donald S. Payson for American Seed Trade Association, Southern Seedmen's Association, and Pacific States Seedsmen's Association; H. W. Prickett, Stephen H. Love, and Milton H. Love for Intermediate Rate Association, National Wool Growers Association, and various firms; Lee J. Quasey for National Live Stock Marketing Association; J. Curtis Robinson for Growers & Shippers League of Florida; C. M. Reed for various farm organizations, and 14 national and State organizations; O. W. Sandberg for American Farm Bureau Federation; Anthony E. Sicilia for Midwest Wool Trade Association; E. B. Smith for Sperry Flour Company and California Hay, Grain & Feed Dealers Association; L. H. Stewart for California Arizona Cotton Association; W. R. Scott and J. W. Hallo-
86 way for Board of Trade of Kansas City, Mo., J. C. Suttie for National Hay Association and Omaha Hay Association; W. S. Turner for Arkansas Cotton Trade Association; O. W. Tong for Minnesota Canners Association, Maine Potato Growers & Shippers Association, and Northern Potato Traffic Association; Warren H. Wagner, C. O. Dawson, H. W. Davis, and C. A. Heath for Interior Iowa Packers; Raymond Williams and E. J. Theisen for New York State Hay & Grain Dealers' Association.

E. M. Burns for Northwest Canners' Association, Northwest Fruit Barrelers' Association, and Vinegar Manufacturers' Association; Paul E. Blanchard and W. W. Manker for Armour & Company; J. L. Carling for Arbuckle Brothers; Frank M. Cooke for Jacob Dold Packing Company; Jos. C. Colquitt and R. E. Cook for H. J. Heinz Company; C. S. Connolly for Carnation Company of California, and Albers Brothers Milling Company; Edward S. DePass for Evaporated Milk Association; H. D. Driscoll for Oklahoma Millers' Association; M. M. Emmert for Coca Cola Company; J. Harry Covington and Spencer Gordon for National Canners Association; M. A. Gray for H. D. Lee Mercantile Company; C. A. Heath for Rath Packing Company; W. T. Hickerson for American Salt Corporation, Carey Salt Company, and Barton Salt Company; E. T. Hadley for Borden Company; M. S. Hartman for Fairmont Creamery Company; E. H. Hogueland, Thad. L. Hoffman, and I. M. Herndon for Southwestern Millers' League; Irving F. Lyons for Canners League of California, and Utah Canners' Association; R. D. Lytle for North Pacific Millers' Association; M. H. Love for Amalgamated Sugar Company, Holly Sugar Company, Springville-Mapleton Sugar Company, Gunnison Sugar Company, Layton Sugar Company, and Utah-Idaho Sugar Company; B. F. McKenhen for Pacific States Butter, Egg, Cheese, & Poultry Association; Ralph Merriam for Morton Salt Company; Wm. R. Moore for National Confectioners Association of United States, and Eastern

Confectioners' Traffic Bureau; H. V. McNamara for Western Sugar Refinery; G. A. Nimmo for Planters Nut & Chocolate Company, and Suffolk, Va., Chamber of Commerce; V. K. Raymond for National Sugar Refining Company of New Jersey; Fred M. Renshaw and Charles G. Redlich for Jacob Dold Packing Company; P. M. Ripley for American Sugar Refining Company; E. F. Scott for American Association of Creamery Butter Manufacturers, and National Poultry, Butter & Egg Association; Claude E. Street for Florida Grapefruit Canners Association; V. Schaffenburg for Myles Salt Company, Limited, and Bay Chemical Company, Incorporated; F. L. Thomas and H. R. Burr for Wisconsin Canners' Association; W. J. Tomkins for Diamond Crystal Salt Company, Colonial Salt
87 Company, Ohio Salt Company, and Union Salt Company; George Turner for Land of Lakes Creameries; Lynne P. Townsend for New England Retail Grain Dealers' Association; Elmer Westlake and J. G. Breslin for Western Sugar Refinery, and California & Hawaiian Sugar Refining Corporation, Limited; L. Z. Whitback for Great Atlantic & Pacific Tea Company.

J. E. Barnhard for St. Joseph Lead Company, M. M. Caskie for Reynolds Metals Company, Stokeley Brothers & Co., and Fulton Sylphon Company; P. A. Champney for American Can Company; John L. Finerty for American Smelting & Refining Company, and National Sugar Refining Company of New Jersey; H. A. Gray for Eagle Picher Lead Company; Russell G. Lucas for Utah Copper Company, Nevada Consolidated Copper Company, and Utah Chapter, American Mining Congress; William A. Moore for New Jersey Zinc Company, New Jersey Zinc Sales Company, New Jersey Zinc Company (of Pennsylvania), Empire Zinc Company, Mineral Point Zinc Company, and Bertha Mineral Company; Robert E. Quirk for Anaconda Copper Mining Company, International Smelting Company, Inspiration Consolidated Copper Company, Green Cananea Copper Mining Company, and American Brass Company; Walter A. Smith for New Jersey Zinc Company; Frank M. Swacker for New Jersey Zinc Company, New Jersey Zinc Sales Company, Mineral Point Zinc Company, Bertha Mineral Company, Empire Zinc Company, and Chestnut Ridge Railway Company; Luther M. Walter, John S. Burchmore, and Nuel D. Belnap for National Crushed Stone Association, Tri-State Zinc & Lead Ore Producers Association, Eagle-Picher Lead Company, and St. Joseph Lead Company; S. L. Yerkes for Alabama Mining Institute.

Benjamin J. Brooks for National Granite Commission; Homer J. Conley for Fort Smith Traffic Bureau and Carthage Marble Corporation; H. H. Bieze for Indiana Division National Association of Natural Stone Producers; J. Raymond Hoover for Vermont Marble Company; Frank H. Luther for Washington Building Lime Company, and Standard Lime & Stone Company; J. Prince Webster for Georgia Limerock Company; E. E. Williamson for Limestone Products Corporation of America; V. E. Anderson for southwestern glass

interests; J. A. Bernier for Kerr Glass Manufacturing Corporation, Alex. H. Kerr & Company, Incorporated, and Kerr, Hubbard & Kelley; Jos. C. Colquitt and J. C. Magness for Glass Container Association of America; James C. Davie for Illuminating Glassware Guild; Jacob Mauiss for Phillips Glass Corporation, and Mission Orange, Incorporated; H. D. Musick for Blue Ridge Glass Corporation, and Kingsport Press, Incorporated.

88. George J. Bolender for Paper Makers Chemical Corporation, C. K. Williams & Company, Vera Chemical Company of Canada, Limited, George S. Mepham & Company, Superior Pine Products Company, and Seminole Pigments Company; E. G. Blanchard, John R. Meeks, and L. B. Rockwell for North Alabama Utilities Company, Decatur Fertilizer Company, Farmers' Fertilizer Company, Chase Nursery Company, Dixie Syrup Company, Alabama Asphaltic Limestone Company, Dixie Minerals Corporation, and Ware Brothers Agency; Harold R. Hendrick for Cincinnati Chemical Works, Incorporated; M. H. Hertel for Wood Chemical Institute, Incorporated; P. L. Hollingsworth for American Potash & Chemical Corporation, and Three Elephant Borax Corporation; John H. C. Kirk for Darling & Company; Harry C. Ames and Warren N. Watson for Manufacturing Chemists Association of America; A. D. Whittemore, C. A. Fulton, and F. G. Moore for Phosphate American Agricultural Corporation, Southern Phosphate Corporation, Phosphate Mining Company, Coronet Phosphate Company, and Florida Pebble Phosphate Export Association; T. J. Burke, D. A. Dashiell, J. H. Hunt, F. G. Moore, F. B. Porter, and A. D Whittemore for numerous fertilizer manufacturers and shippers; A. J. Young for International Agricultural Corporation.

E. N. Adams for Tulsa, Okla., interests; R. C. Allen for Nogleby-Norton Company; J. F. Atwater for American Hardware Corporation; Smith W. Brookhart for himself; E. A. Barror for Valvoline Oil Company; Nuel D. Belnap for National Crushed Stone Association; C. A. Barinowski for Birmingham Slag Company, Montgomery Gravel Company, Woodstock Slag Corporation, Tennessee Valley Sand & Gravel Company, and Stockbridge Stone Company; C. S. Bather for Rockford Manufacturers & Shippers Association, Rockford Furniture Manufacturers Association, National Association of Furniture Manufacturers, and Better Bedding Alliance of America; H. L. Burch for Kentucky Rock Asphalt Company; W. S. Barton for Ash Grove Lime & Portland Cement Company; W. A. Cook for Merry Brothers Brick & Tile Company; Joseph W. Connolly for Ford Motor Company; Jos. C. Colquitt and J. T. Ryan for Southern Furniture Manufacturers' Association; H. L. Crowder for Pennsylvania Salt Manufacturing Company; Geo. M. Cummins and A. R. Ebi for Deere & Company; W. G. Clayton, Jr., for Buffalo Holt Company and New System Traffic Service; Edward H. Cooley for Massachusetts Fishing Industry; C. W. Chears for cotton

mills; Carl R. Cunningham and L. O. Kuisherly, Jr., for American Cotton Manufacturers Association, Cotton Manufacturers Association of North Carolina, and Cotton Manufacturers Association of South Carolina; Willis Crane for 22 oil-refining companies;
89 Lee R. Cowles for Kansas Oil Traffic Committee and White Eagle Oil Corporation; L. N. Conyers for Pennsylvania Petroleum Company; Fayette B. Dow and Dow, Crane & Lohnes for National Sand & Gravel Association, and various other sand and gravel associations; Benj. S. Dowdell for Hummel-Ross Fibre Corporation; George A. Duffy for Walton & Company, Incorporated; Roy H. Dahlberg for Shevlin, Carpenter & Clarke Company; C. L. Denk, Jr., for Fulton Bag & Cotton Mill; J. H. Davenport for Wichita Falls Petroleum Traffic Association; C. F. Dowd for Tidal Refining Company, Tidal-Western Oil Corporation, Wilcox Oil & Gas Company, and Cushing Refining & Gasoline Company; C. D. Dooley for Colgate Palmolive Peet Company; E. W. Dallman for Blatz Brewing Company; F. A. Doebber for Citizens Gas Company of Indianapolis.

W. F. Everding for Brown Company; M. W. Eismann for Manufacturers Association of Erie; R. A. Ellison for Associated Producers of Cereal Beverages and Burger Brothers Company; Bernard L. Glover for Iola Cement Mills Traffic Association, Standard Briquette Fuel Company, Phenix Marble Company, Industrial Paper Company, and Missouri Mapes Company; E. S. Gubernator and F. E. Paulson for Lehigh Portland Cement Company and other cement companies; James S. Gill for Upson Company, and Lockport Board of Commerce; J. S. Geiger for United States Brewing Company of Chicago; D. P. Harris for Southwest Clay Products Institute; A. B. Hamilton for United Brick & Tile Company; E. W. Hollingsworth and R. J. Boyd for California Manufacturers Association; William G. Higgins for Santa Cruz Portland Cement Company; F. A. Henry for Dolese Brothers Company; Robin Hood for National Cooperative Council; Frank R. Hale for Structural Clay Tile Association; L. Jones for National Malt Products Manufacturers' Association; L. A. Keck for M. K. Goetz Brewing Company, and Goetz Sales Company.

Wilbur LaRoe, Jr., and Frederick E. Brown for Associated Industries of New York State, Port of New York Authority, Texas Gulf Sulphur Company, and International Paper Company; W. E. Long for Sterling, Ill., Manufacturers' Association; W. H. Lovesy for Utah Oil Refining Company; W. J. M. Lahl for Radio Manufacturers' Association, Incorporated; A. G. Linneman for Associated Producers of Cereal Beverages and Burger Brothers Company; W. Gordon McKelney for Tennessee Manufacturers Association, Nashville, Tenn.; Robert J. McBride for Federal American Cement Tile Company; H. L. McReynolds for White Eagle Oil Corporation; F. B. McElroy for Whitacre-Greer Fireproofing Company; W. S. McCarthy for Intermediate Rate Association, and Salt Lake Hard-

ware Company; T. W. Mackey for Western Shade Cloth Company; J. George Mann for Northrup King & Company; L. F. Mongeon for National Retail Dry Goods Association; H. F. Masman for National Association of Waste Material Dealers, and Waste Paper Institute; Thoms B. Martin for Independent Gravel Company; William Martin for Philadelphia Quartz Company; G. O. Nickel for Bartlett Collins Company, Sapulpa, Okla.; J. K. Moore and J. T. Hiers for American Cotton Cooperative Association, and Staple Cotton Cooperative Association; E. L. Nichols for United States Fisheries Association; Cleveland A. Newton for Mississippi Valley Association.

Arthur E. Pearson for Hollingsworth & Whitney Company; J. F. Potts for Kelley Island Lime & Transport Company; Louis M. Porter for Fruit Dispatch Company; R. W. Poteet for Stanley Works; Morris Prince for North Carolina Hosiery Manufacturers Traffic Association, and North Carolina Full Fashioned Hosiery Manufacturers; F. H. Ramsdell for New Department Manufacturing Company; F. M. Russell for Steel Office Furniture Institute and Metal Furniture Traffic League; E. C. Richmond for Furniture Corporation of America, Limited, and Schlesser Brothers; Ralph Edgar Riley for Illinois Silica Sand Traffic Bureau, Illinois Brick Company, and Chicago Brick Company; W. E. Rosenbaum for cereal-beverage manufacturers and certain lime manufacturers; W. W. Sprague for National Mortar & Supply Company and Woodville Lime Products Company; Lowe P. Siddons for Brunswick Radio Corporation; C. W. Strickland for Cone Export & Commission Company; C. T. Smith for Smith Brothers Nursery Company; R. S. Sawyer for Associated Jobbers & Manufacturers Association of Los Angeles, Calif.; W. G. Stone for Sacramento Wholesalers & Manufacturers Association; W. K. Sanderson for himself; L. D. Snow, E. Richardson, and Manghum & Manghum for Lever Brothers; E. George Seidle for Armstrong Cork Company; Charles Sizemore for American Association of Nurserymen; N. B. Woodsum for Berst-Forster-Dixfield Company.

Herbert Thompson and Jos. C. Colquitt for Union Carbide Company; M. M. Twchig for Willard Storage Battery Company; E. W. Thompson for Interstate Cotton Oil Refining Company; Beecher W. Waltermire for Ohio Paving Brick Manufacturers Association and National Paving Brick Manufacturers Association; John L. Warren for Fruit Dispatch Company; I. H. Ware and George E. Willey for United States Fisheries Association; J. Prince Webster for Georgia Lime Rock Company; C. E. Widell for Tennessee Products Corporation; Fred M. Williams and George W. McCollum for selves and Consuming Public Citizens League of Chattanooga; Walker Wilson for Cosden Oil Company and Richardson Refining Company;

91 E. DeL. Wood for Chattanooga Manufacturers Association; R. O. Youngerman for Mason City Brick & Tile Company; R. O. Youngerman, Frank R. Hale, and H. A. Hollopeter for Structural Clay Tile Association.

By the COMMISSION:

By an application filed June 17, 1931, carriers by railroad and by water throughout the country, subject to our jurisdiction, asserting that an emergency exists, seek authority [1] to make a general increase of 15 percent in their all-rail and rail-water interstate and international freight rates and charges.[2] By order of June 19, we directed the carriers to clarify the application in certain respects. In particular, they were asked whether they were prepared, if the authority sought were granted, to initiate increases of all existing freight rates of the measure proposed in their application, or, if not, what specific exceptions they proposed to make. This inquiry was thus prefaced:

"The Commission having in mind the fact that the carriers are equipped with traffic departments whose duty it is, among other things, to keep fully informed in regard to industrial and competitive conditions in the districts served by their lines and the ability of the traffic to bear existing or higher freight charges, and assuming that no increases in freight rates would be initiated which, in the opinion of those departments, the traffic cannot reasonably bear or which for any other cause hold forth no substantial promise that revenue will thereby be increased, and being of the opinion that it is of prime importance, under present conditions, that industries and shippers should not find it necessary to participate in proceedings before the Comission with respect to freight rates, if any there be, which the carriers do not in fact intend to increase even though the authority sought be granted."

On June 24 the carriers replied that they were prepared to increase all freight rates and charges, without exception, in the measure proposed. At the hearings it was made clear that the increases sought, if approved, were to apply to (a) all rates in effect on the date of our final order herein, (b) all rates contained in prior tariffs or supplements effective subsequent to the date of such order, and (c) all rates prescribed by us prior to the date of such order to become effective subsequent thereto.

92 Hearings on the application began July 15 and extended into early September. They were held at Washington, D.C., Portland, Me., Atlanta, Ga., Dallas, Tex., Kansas City, Mo., Portland, Oreg., San Francisco, Calif., Salt Lake City, Utah, and Chicago, Ill. There were taken 11,719 pages of testimony, 1,048 exhibits were received, and 656 witnesses heard. Applications for a similar general increase in intrastate rates and charges were pending or pro-

[1] Specifically, the carriers seek special permission to file percentage supplements to existing tariffs increasing all freight rates and charges 15 percent, except in certain cases where specific tariffs on substantially the same basis, complying with the ordinary rules of tariff publication, may be filed. They ask, also, that we conduct such investigation as may enable us to determine whether such tariffs should be permitted to become effective without suspension, and that we modify orders outstanding so that they will not prevent publication of the proposed increases.

[2] Except rates on raw milk and cream, handled principally in passenger or milk trains, and demurrage or track storage charges. The carriers also propose to adjust the increased rates so as to preserve existing port differentials on export and import traffic, and certain differentials on coal and coke within the eastern group.

posed before State commissions, and we accordingly invited their cooperation. Most of them accepted, selecting from their number eight representatives,[8] two from the Eastern Group, two from the Southern Gorup, two from the Western Group, and two from the mountain-Pacific Group. These commissioners sat with us at the hearings and during oral argument, and participated in our deliberations preceding the decision.

The supporting evidence

Applicants' evidence.—The evidence of the carriers is directed for the most part to their revenue or financial needs. It deals with the carriers in the aggregate or according to the three recognized territories, eastern, southern, and western. We shall summarize this evidence briefly. In 1930, the net railway operating income of class I carriers amounted to $868,878,792, or 3.54 percent of the value of the property, ascertained by adding to the aggregate value found by us in Increased Rates, 1920, 58 I.C.C. 220, the net cost of additions and betterments made subsequent to that date. Using as a basis the relation of revenues and expenses for the first six months of 1931 to those of 1930, the net railway operating income for 1931, it is estimated, will amount to $553,000,000, or 2.25 percent upon value as above ascertained. Compared with 1930, in the first six months of 1931 freight revenues decreased 18 percent, passenger revenues 23.3 percent, mail 5.4 percent, express 24.2 percent, and miscellaneous 18.8 percent. Operating expenses decreased 17.2 percent, and to effect this decrease it was necessary to limit maintenance. Using as a basis freight revenues for 1931, so estimated, the 15 percent increase in rates and charges sought would, if there were no consequent falling-off in traffic, yield an additional $502,000,000 of revenue, which, allowing for income tax and other deductions, would bring net operating income to $985,000,000, or 4.01 percent on the assumed property value.

93 Evidence was submitted to show that, judged by recognized indices of operation, there has been a steady and large improvement in the economy and efficiency of railroad operation since 1920. No evidence was offered by the carriers bearing on the reasonableness of the wages which they pay, and we refused to receive evidence offered by others in regard to this matter, on the ground that we have no jurisdiction over wages or part in the procedure prescribed by the Federal law for their determination.

The carriers are not seeking the full fair return on value to which they assert that they are entitled by law. They are willing to share with other industries the burden of the general depression. They

[8] W. D. B. Ainey, chairman, Public Service Commission of Pennsylvania; Herbert W. Trafton, commissioner, Public Utilities Commission of Maine; Harvey H. Hannah, chairman, Railroad and Public Utilities Commission of Tennessee; Hugh White, president, Public Service Commission of Alabama; Paul A. Walker, chairman, Corporation Commission of Oklahoma; A. R. McDonald, commissioner, Railroad Commission of Wisconsin; William J. Carr, commissioner, Railroad Commission of California; J. M. Thompson, president, Public Utilities Commission of Idaho.

ask to be relieved of a part of their present burden on the grounds that public regulation prohibits them from sharing to the same extent as private industries in the profits of prosperity, that their present low earnings imperil their credit and hence the stability of an industry on which all others are dependent, and that the increase desired will restore confidence, stimulate buying, and lead the way to a return of prosperity. They further assert that on any conceivable basis of valuation they are falling so far short in their earnings as to make it unnecessary to determine in this proceeding the actual aggregate value of their properties devoted to carrier use. For similar reasons they deem it unnecessary to inquire whether the 5.75 percent, heretofore fixed by us, is a fair return under present conditions.

The carriers offered no evidence with respect to the rates on any particular commodity or kind of traffic. Other than general assertions in testimony by three presidents, one from each territory, that on much traffic the increased rates would produce revenue substantially in proportion to the percentage sought, they offered no evidence as to the effect which the increase would have on the movement of all or any traffic. They presented no witnesses familiar with traffic conditions, and resisted the attempts of shippers to call their traffic officers to the stand. It was admitted that it had been found necessary to reduce numerous rates voluntarily to meet competitive conditions and to refrain from taking advantage of all the opportunities to increase freight rates which our decisions have offered. It was also admitted that because of competitive and industrial conditions it would be necessary, if the 15 percent increase were granted, thereafter to make numerous downward adjustments of rates with a view to holding traffic and avoiding shrinkage in revenue. For this reason it was conceded that a 15 percent increase in rates would not yield a proportionate increase in revenue, but no estimate of the difference was given. It was testified that the presidents believed that a
94 substantial increase in revenue would result, and that they had obtained the advice of their traffic officers. Subsequent evidence showed, however, that so far as such advice was formally tendered, it bore only on the form which the increase should take if one were to be sought. No increase in passenger fares is sought because of the feared effect on traffic and revenue.

Security holders' evidence.—The chief support to the carriers' application was given by two committees[4] representing holders of railroad securities. Their evidence we shall also summarize briefly. It was presented to prove that railroad credit has collapsed, the present situation constituting an emergency of the gravest character; that we are under a legal duty to maintain railroad credit by all means

[4] One committee represented life insurance companies and mutual savings banks. Out of a total of about $4,700,000,000 par value of railroad bonds held by such institutions, this committee spoke for the holders of $3,444,801,000 bonds. The other committee represented large institutional holders of railroad securities, chiefly banks and trust companies holding such securities in a fiduciary capacity but including, also, universities, hospitals, and charitable organizations, fire insurance companies, and casualty, indemnity, and surety companies. The known representation of this committee is over $1,700,000,000 par value of railroad securities, mostly bonds, but this figure is regarded as an underestimate.

in our power; and that an immediate increase in freight rates and charges is the only practicable method of meeting the emergency, regardless of the future steps required for a permanent solution of the problem of stabilizing railroad credit. Evidence was offered to show that there has been a serious decline in the market value of railroad bonds, and particularly of the overlying and refunding mortgage bonds which, with a few exceptions, are the only medium by which carriers can now hope to raise money for refunding or for new capital expenditures. In the case of the 59 class-I roads having operating revenues of $10,000,000 or over and having overlying bonds outstanding in the hands of the public, such bonds suffered an average decline under the high point of 1930 of 17.6 points to June 1, 1931, and of 28.5 points to August 24. The average income yield to maturity was 4.83 percent at the 1930 high, 6.94 percent on June 1, 1931, and 7.66 percent on August 24. They are, in general, bonds which were, prior to the depression bought by conservative investors at low interest rates. This decline has taken place at a time when money rates were extraordinarily easy and there was a large and increasing demand for safe bonds, and it has been greater than in the case of any comparable class of securities. Bonds which are regarded as safe investments contemporaneously increased in value.

Of a total of $7,562,500,000 railroad bonds now legal for investment by savings banks and trustees, if the New York savings bank standard be applied, the testimony indicates that about $5,877,600,000 are in grave danger of being stricken from the list.
95 To be eligible under this standard, the railroad issuing the bonds must have earned its fixed charges at least 1.5 times during five of the last six fiscal years preceding the investment, and in the fiscal year next preceding. But elimination from the list does not necessarily mean that such bonds, previously acquired, must be sold. In the case of the New York savings banks, the superintendent of banks may order them to be sold, and all holding such bonds in a fiduciary capacity must, in the exercise of a wise discretion, be governed by the legal principles affecting the duty of trustees with respect to investments. Certain railroads of previous unquestioned financial standing will probably fail to earn all their interest requirements this year. Greater deficiencies have been prevented by reductions in operating expense, including deep cuts in maintenance. Along with the impairment in railroad credit has gone a tremendous shrinkage in the value of the equities represented by railroad stocks.

This impairment in railroad credit is ascribed by these committees to the inadequacy of the average rate of return since the passage of the Transportation Act, 1920; to the decline in the margin of safety for interest on railroad bonds, due chiefly to the disproportionate increase in operating expenses as compared with fixed charges; and to the decline of confidence in the future of the railroads, because of the rapidly increasing competition. Not only does this fall in credit now close normal channels of railroad financing for refunding operations and the raising of new capital, but in the opinion of

these committees it threatens the permanent withdrawal of capital from the railroad industry. The shrinkage in the market prices of railroad securities imperils the beneficiaries of trust funds, and also the reserves of consevative financial institutions in a manner tending to intensify the present economic crisis. The commttees regard the maintenance of railroad credit as second in importance only to the maintenance of peace and order through government, and as essential to a return of normal economic conditions, railroad service being an indispensable public facility affecting the entire economic life of the nation. They contend, finally, that the granting of a rate increase is the only practiable method of meeting the existing and immediate emergency, and that no other method has been suggested. They assert that just as, even in a depression taxes must be increased, if that be necessary to support the credit of the Government, so railroad rates must be raised if this basic industry be in peril.

Commercial organizations' evidence.—A few commercial organizations definitely favor the increase sought. Those who do not oppose have for the most part maintained an attitude of neutrality.

96 The question of law

Before indicating the nature of the opposition, it will be well to consider the contentions of the carriers with respect to the law. Technically, the application is under section 6 of the interstate commerce act for authority to depart from our ordinary rules governing tariff publication, coupled with a request that we now reach the conclusion, after investigation, that if the contemplated tariffs are filed, they will not be suspended. Fundamentally, however, the carriers rely upon the provisions of section 15a (2) reading as follows:

"(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish, or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time, designate) will, under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment, earn an aggregate annual net railway perating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: Provided, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country."

Section 1 (5), which antedates section 15a but was reenacted in the 1920 legislation, requires, among other things, all charges made for any service rendered in the transportation of property to be just and reasonable, and it prohibits and declares unlawful "every unjust and unreasonable charge for such service or any part thereof."

Briefly stated, it is the position of the carriers that section 15a changes our duty to prescribe just and reasonable rates by introducing in the law a new standard for our guidance. It is asserted that under the former law a carrier in a competitive group had no legal protection unless the strongest carrier in the group was in a position successfully to assert confiscation of its property. The rates being competitive, the weaker line had to meet them or go out of the business. The stronger line might not be disposed to assert in the courts its constitutional rights. Even if it were so disposed and succeeded in the assertion, the increase it could secure in the rates would only be that which would bring its own earnings above the line of confiscation of its own property. Such a measure of relief would fall below, perhaps much below, the measure of the constitutional rights of the weaker lines. Prior to 1920, the argument is that we had dealt with revenue considerations as a factor in just and reasonable rates, but had not solved the problem of the treatment of groups of railroads in such a way as to maintain their earnings, their credit and their adequacy as component parts of a national system
97 of transportation. Section 15a was designed to remedy that failure. "In substance," according to the carriers, "the constitutional right of a single carrier to a fair return which could not as a practical matter be asserted was extended to the group as a whole and the Commission was given a mandate to render the right productive."

Because of the provisions of section 15a, it is contended that rates, otherwise reasonable, perforce become unreasonably low if the general schedule of rates, of which they are a part, produces revenues which in the aggregate fail to attain the results contemplated by the section. Quoting from the carriers' brief, "It is thus apparent that in any case involving the reasonableness of an increase or decrease in the general rate level, the revenue consideration is paramount and controlling." Quoting again, it is said "that the use of the expression 'just and reasonable rates' in section 15a connotes a different meaning from its use elsewhere and recognizes the paramount financial consideration." It is urged that the section is superimposed upon the power to prescribe just and reasonable rates in such a way that if the effect of the exercise of that power is to bring the revenues above or below the statutory level, adjustments of earnings to that level must be made by us through other changes in rates. The words "as nearly as may be" in paragraph (2), according to this view, introduce no discretionary factor, but merely cover the mathematical impossibility of attaining the prescribed standard precisely.

In support of this view the carriers rely chiefly upon Dayton-Goose Creek Ry. v. U.S., 263 U.S. 456. Among the statements in that opinion which are stressed are the following:

"The new act seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. It aims to give the owners of the railways an opportunity to earn

enough to maintain their properties and equipment in such a state of efficiency that they can carry well this burden. To achieve this great purpose, it puts the railroad systems of the country more completely than ever under the fostering guardianship and control of the Commission, which is * * * by a proper division of joint rates, and by fixing adequate rates for interstate commerce, and in case of discrimination, for intrastate commerce, to secure a fair return upon the properties of the carriers engaged (page 478).

"Rates which as a body enable all the railroads necessary to do the business of a rate territory or section, to enjoy not more than a fair net operating income on the aggregate value of their properties therein economically and efficiently operated, are reasonable from the standpoint of the individual shipper in that section (page 480).

"It is clearly unsound to say that the net operating profit accruing from a whole rate structure is not relevant evidence in determining whether the sum of the rates is fair. The investment is made on the faith of a profit, the profit accrues from the balance left after deducting expenses from the product of the rates, and the assumption
98 is that the operation is economical and the expenditures are reasonably necessary. If the profit is fair, the sum of the rates is so. If the profit is excessive, the sum of the rates is so. One obvious way to make the sum of the rates reasonable so far as the carrier is concerned is to reduce its profit to what is fair (page 483)."

Among pertinent quotations from other decisions of the Supreme Court is the following from Wisconsin R.R. Comm. v. C., B. & Q. R.R. Co., 257 U.S. 563, 585:

"It is manifest from this very condensed recital that the act made a new departure. Theretofore the control which Congress through the Interstate Commerce Commission exercised was primarily for the purpose of preventing injustice by unreasonable or discriminatory rates against persons and localities, and the only provisions of the law that inured to the benefit of the carriers were the requirement that the rates should be reasonable in the sense of furnishing an adequate compensation for the particular service rendered and the abolition of rebates. The new measure imposed an affirmative duty on the Interstate Commerce Commission to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States. This is expressly declared in section 15a to be one of the purposes of the bill."

The carriers also stress a report of the House committee when the Transportation Act, 1920, came out from the conference committee. In this report it was stated that the House bill "continued the existing law authorizing the Interstate Commerce Commission to prescribe just and reasonable rates," but that the Senate amendment "added to the just and reasonable rate a requirement that the rates must be adequate to enable the carriers as a whole to earn a fair return on the aggregate value of their property." It was further stated that the "House receded from its disagreement to these provisions."

Up to a certain point we do not differ with the carriers' interpretation of the law. We agree that our duty with respect to fixing just and reasonable rates was changed by Congress in the act of 1920, through the provision of a modified standard for our guidance. We agree that there was then introduced into the law a new element of protection for the carriers in the public interest, a protection particularly of the credit essential to the preservation of an adequate national system of transportation. We believe that it is our duty under the congressional mandate to exercise our powers in every reasonable and practicable way to the promotion of that end. We agree, as we did in 1920, that in such a general rate proceeding as this, involving primarily revenue considerations, we can not undertake to consider the justness and reasonableness of individual rates.

But there is more than this to be said, if our full duty is to be made clear. In Reduced Rates 1922, 68 I.C.C. 676, 730, we said, in considering section 15a, "Our function under the law is not that of mere computers and can not thus be atrophied." Assuming
99 that the paramount purpose of that section is the provision of adequate revenue for the carriers, it is the actual revenue result of a proposed increase in rates which we must have in mind, and not the effect apparent superficially. We understand that in principle the carriers do not dispute this proposition, although they may differ as to how conclusions upon this point are to be reached. Our own view is that we are not justified in approving a rate increase if we are convinced that such increase will not operate to the revenue advantage of the carriers.

On this point, the following from Florida v. United States, 282 U.S. 194, 214–215, is pertinent:

"In considering the authority of the Commission to enter the state field and to change a scale of intrastate rates in the interest of the carrier's revenue, the question is that of the relation of the rates to income. The raising of rates does not necessarily increase revenue. It may in particular localities reduce revenue instead of increasing it, by discouraging patronage. * * *

"The Commisison made no findings as to the revenue which had been derived by the carrier from the traffic in question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service."

Nor is this all. In Smyth v. Ames, 169 U.S. 466, 547, the court said:

"What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

This principle has repeatedly been affirmed by the Supreme Court. It is stated in Corpus Juris, vol. 10, page 418, and we think accurately:

"The public is entitled to demand that no more shall be exacted from it than the services rendered are reasonably worth, and this right takes precedence even over the right of the carrier to a fair return on its investment when the two rights can not stand together. In consequence, the value of the service to the public is an important factor in determining the reasonableness of the rates charged therefor."

An application of the principle is found in Covington, &c., Turnpike Co. v. Sandford, 164 U.S. 578, 597, where the court said:

"It is alleged here that the rates prescribed are unreasonable and unjust to the company and its stockholders. But that involves an inquiry as to what is reasonable and just for the public. If the establishment of new lines of transportation should cause a diminution of the number of those who need to use a turnpike road, and, consequently, a diminution in the tolls collected, that is not, in itself, a sufficient reason why the corporation, operating the road, should be allowed to maintain rates that would be unjust to those who must or do use the property."

100 We do not understand that Congress, even if it be assumed that it could lawfully have done so, attempted in section 15a to override or discard this basic principle of the law, or that there is anything in the decisions of the Supreme Court which indicates that such a result has been accomplished. In Wisconsin R.R. Comm. v. C., B. & Q. R.R. Co., supra, 586, the court said:

"Section 15a confers no power on the Commission to deal with the intrastate rates. What is done under that section is to be done by the Commission "in the exercise of its powers to prescribe just and reasonable rates," i. e., powers derived from previous amendments to the Interstate Commerce Act, * * *."

In the Dayton-Goose Creek case, the question at issue was the validity of the recapture clause, and the court was not called upon to define or consider all the factors which affect the determination of reasonable rates. It did say that an individual shipper, because of his interest in the maintenance of "all the railroads necessary to do the business of a rate territory," could not complain of a general level of rates higher than would have been reasonable considering the service rendered him alone. We agree with the carriers that prior to section 15a the revenue needs which we were bound to consider were those of individual carriers, although as a practical matter we have long considered all competing lines and not merely that line which can handle the business cheapest in determining the reasonableness of rates. Receivers and Shippers Asso. v. C., N. O. & T. P. Ry. Co., 18 I.C.C. 440. Thereafter the standard was changed by Congress so that now we are bound to consider

instead the revenue needs of the carriers in the aggregate or by groups, and such needs were brought into the foreground and emphasized. In every reasonable and practicable way we must recognize those needs and protect the general credit of the carriers. The direction to maintain an adequate system of transportation was reaffirmed by Congress in the Hoch-Smith Resolution in 1925, U.S. Code, T. 49, sec. 55.

But section 15a has not, in our opinion, made revenue needs the "paramount and controlling" factor in the determination of a reasonable general level of rates. Factors which theretofore were relevant and entitled to consideration, notwithstanding the revenue needs of individual carriers, are still relevant and entitled to consideration, notwithstanding the revenue needs of the carriers in the aggregate or by groups. Among those other factors are the following:

1. The value of the service to the shipper.—The relation of the general level of freight rates to the general level of commodity prices is a factor which cannot be disregarded, particularly in a time of general financial prostration. Stated in another way,
101 it means consideration of what the traffic can reasonably be made to bear. As the Supreme Court recently said in Ann Arbor R. Co. v. United States, 281 U.S. 658, 669, in speaking of certain words in the Hoch-Smith Resolution:

"If they mean no more than that the depressed condition of the industry is to be given such consideration as may be reasonable considering the nature and cost of the transportation service and the need for maintaining an adequate transportation service, they work no change in the existing law."

This resolution became law subsequent to the enactment of section 15 (a).

2. The volume of business carried on by the carriers and its relation to what may be deemed normal.—As we said in Reduced Rates, 1922, supra, 680:

"The operation of economic forces which have prevented, or which may hereafter prevent, carries from earning a fair return under the adjustment prevailing does not constitute a bar to determination of what a fair return should be. By the qualifying words "as nearly as may be," Congress recognized that conditions during certain periods might prevent such realization under any adjustment of rates.

"Section 15a, reasonably construed, contemplates the determination of a return which the carriers, collectively or in rate groups, may attain over a period of time under rates adjusted from time to time with that object in view. The phrase "from time to time" does not mean that we should adjust and readjust rates to meet business fluctuations."

It is only necessary to have in mind the incongruous results which would follow an attempt to adjust rates so that a stable rate of return would be realized, notwithstanding general business conditions and

the rise and fall of traffic in consonance therewith, to realize the unreasonableness and impracticability of any such policy. In part this is recognized by the carriers in this very application.

3. The return realized from the freight service alone, as distinguished from other forms of service rendered by the carriers.—Nor. Pac. Ry. v. North Dakota, 236 U.S. 585, and Norf. & West. Ry. v. West Virginia, 236 U.S. 605. It is not our view that these cases prevent the imposition of a burden upon one form of service to compensate for an inevitable deficiency in earnings of another form of service performed by the same carrier. Revenues in Western District, 113 I.C.C. 3, 22–23. However, the earnings of the particular service in question are entitled to consideration in the fixing of reasonable rates.

For the moment we express no opinion as to the weight to be given these particular factors in the present proceeding. That will be considered later. But that they are relevant and material factors which must be given consideration we are persuaded. We are
102 here speaking of the general level of rates, as applied to all traffic, or particular forms of traffic, and not of individual rates.

The opposing evidence

We now come to the evidence presented by protestants. As in the case of the supporting evidence, it will here be very briefly summarized. Protestants are numerous and represent not only commercial organizations but many of the most important industries of the country. Agriculture in all its branches, including livestock and dairy products, is represented, as well as coal (both bituminous and anthracite), copper, lead, zinc, iron and steel, sand, gravel and crushed stone, cement, sulphur, clay products, logs, lumber, petroleum and its products, newsprint and other paper, packinghouse products, fisheries, naval stores, sugar, furniture, textiles, canned goods, fertilizers, chemicals, glassware, and other industries. Collectively, protestants represent the great bulk of the carriers' freight traffic. In several instances States are represented officially in protest, in the West, East, and South. These protestants in general recognize the serious revenue needs of the carriers, and for the most part they are in no wise unfriendly to the railroads. The protests are not animated by the ordinary and natural antagonism to any rate increase, but very largely by a sincere conviction that harm rather than good would result therefrom, both to the country generally and to the carriers.

This opposing evidence, broadly speaking, follows two distinct although related lines. A mass of evidence was introduced to show that the carriers are not alone in their financial distress but have the company of practically all industries, many of which are in worse condition. The causes of suffering are not only the great shrinkage in volume of business done, but a violent fall in the prices received for products, a fall which has not been experienced by the carriers

in the prices which they receive for their services. This fall in the price level, in the case of agriculture, has been of extraordinary severity, so that important branches of that industry are in a state of unprecedented collapse and prostration. The situation is similar and almost as acute in certain other industries, and depression in greater or less degree extends to all.

Because of this situation, the burden of transportation expense in the distribution of products has vastly increased in relative importance and weight, with the result that the industries find it necessary to minimize and curtail this expense in every feasible way, regardless of sympathy for the railroads and reluctance to harm them financially. Following the line thus indicated, voluminous and detailed evidence was presented to show the unusual opportuni-
103 ties for reducing transportation expenses which now exist, the extent to which industries have availed themselves of these opportunities, and the extent to which this tendency would be accelerated if freight rates should be increased 15 percent. We shall discuss this situation in more detail at another point in this report. It will suffice here to say that it was by no means confined to mere opinion evidence, for in many instances opinions were fortified by the presentation of concrete and specific facts and pertinent statistics.

In addition to evidence along these lines, testimony was given by economists to show that an increase in freight rates under present conditions would be economically unsound, and that it would be much more likely to harm than to help the general situation. It was also shown that in certain former periods of acute financial depression the railroads, prior to effective Federal regulation of their rates, did not increase rates. On the contrary the tendency was downward. Statistics were presented covering railroad operations in the past, including financial results, to some of which we shall advert hereinafter. The fact was emphasized that it has been decline in net passenger earnings rather than in net freight earnings which has been the predominant factor in bringing the railroads to their present position. Evidence was also offered to show that the credit situation of the carriers may not in all respects be as desperate as is indicated by the testimony of the committees representing security owners.

Discussion and conclusions on 15 percent increase

In this discussion we shall deal first with the railroad credit situation, dividing it into two periods, one from 1920 to 1929, inclusive, and the other from 1930 to the present time.

The first of these periods, considering the carriers in the aggregate, was characterized in general by continual improvement in carrier credit. It was a period of rapid expansion in railroad plant and facilities. Investment in road and equipment increased by about $5,500,000,000. Funded debt, including equipment obligations, totalling $6,918,180,691 par value was issued, some of course in con-

nection with reorganizations and a great part to refund other securities. Stock totalling $1,887,881,601, par value or its equivalent, was issued, including stock dividends, which did not, however, account for any large fraction of the total, and stock issued in connection with reorganizations. Corporate surplus increased from $3,142,416,871 to $5,529,010,053, a total of $2,386,593,182, or about 76 percent. The amount of stock yielding dividends increased from $5,075,039,642 to $7,506,264,973; the average rate on dividend-
104 yielding stock, from 6.52 to 7.47 percent; and the average dividend on all stock, from 3.74 to 5.70 percent.

It is true that at no time did the aggregate net railway operating income equal 5.75 percent on our best estimate of the fair value of aggregate carrier property; and much has been made of this fact by the carriers and security holders. But without wholly disparaging the importance of this fact, it is also true that after 1922, when we found 5.75 percent to be a fair average return, the general trend of interest rates was downward, and that at no time following the 10 percent reduction in rates in that year did the carriers seek a horizontal increase in rates, except in the western district. There a 5 percent increase was sought and denied, but with the suggestion to the carriers that they should analyze their traffic and initiate increases on particular commodities in lieu of a horizontal increase on all traffic. We are also persuaded that the recapture provisions of section 15a had a tendency to depress aggregate net earnings by unduly stimulating the expenditures of the more prosperous carriers.

The point has been made that the carriers during the period of prosperity were prevented by public regulation from enjoying the large profits which accrued to private unregulated industries. Aside from the fact that in the period 1920 to 1929, the carriers increased their total corporate surplus by over two billions of dollars and at the same time were able to increase dividend payments materially, the evidence indicates that a misleading impression is created by the fact that railroad earnings are stated in the aggregate, including all railroads both good and bad, those which were improvidently constructed with inadequate public need and those which constitute the essential arteries of commerce. In the case of private industries, no similar information is broadcast and attention is apt to be concentrated on the outstanding companies which are making the largest earnings without reference to a greater number which have failed. Research into the aggregate earnings of typical private industries the results of which were presented of record, indicate that the average earnings of the railroad industry have been better than those of some of these private industries and not much less favorable than those of others.

Reference has also been made to the dwindling ton-mile revenue of the railroads, and this is ascribed to public regulation. From 1890, when the figure was 0.941 cents per ton-mile, the tendency was steadily downward until 1899, when 0.724 was reached. Then it was slightly upward to 1904, when the figure was 0.780. Again the ten-

dency turned downward until a low point of 0.719 cents was reached in 1916. Thereafter, the figure rose sharply during the War period and the immediately ensuing years, with our approval,
105 to meet the greatly increased expense of operation, attaining a maximum of 1.294 cents in 1921. In 1922, the 10 percent reduction occurred, but its full effect was not felt until 1923, when the figure became 1.132 cents. Thereafter it fell slowly, reaching 1.088 cents in 1929, or a drop of a little less than 4 percent since 1923. However, in the same period freight operating expense per revenue ton-mile fell from 0.869 to 0.729 cents, or a drop of about 16.1 percent. Net railway operating income from freight per net ton-mile increased from 1.918 mills in 1923 to 2.765 mills in 1929, a gain of a little more than 44 percent, whereas net railway operating income from passengers per passenger-train car-mile decreased from 4.697 cents in 1923 to a deficit of 0.586 cents in 1929. It is plain that it has been the passenger rather than the freight business which has been a drain on net railway earnings.

Revenue per ton-mile is not a precise index of the general freight rate level, because of the varying length of average haul and composition of traffic. Assuming it to be nearly correct, it does not follow that the drop in this figure since 1923 is due to public regulation, although this may in part be the case. We have reduced various rates and increased others. However, it is well known that the railroads have themselves voluntarily reduced many rates for competitive and commercial reasons. The nonferrous metals are outstanding examples, the rates on which the carriers have reduced for one cause or another to such an extent that, in general, the increase which we granted in 1920 has been wholly eliminated together with a substantial part of the increase made by the Director General of Railroads during the period of Federal control. Other illustrations in the case of transcontinental traffic, lumber, petroleum and its products, cotton, and numerous other commodities are familiar.

Traffic and earnings fell sharply in 1930, but without immediate substantial effect on railroad credit. The market for railroad bonds continued good. In that year, omitting issues of less than $100,000, bonds with a par value of $675,073,000 were marketed at an average yield to the public of 4.77 percent, and $100,328,000 of equipment obligations at an average yield of 4.62 percent. These were the lowest average yields from railroad securities sold since 1920, with the exception of 1928 in the case of bonds and 1927 and 1928 in the case of equipment obligations. In the first six months of 1931 bonds with a par value of $319,209,000 were marketed and $38,209,000 of equipment obligations. Counsel for the savings banks and insurance companies stated in argument that credit was relatively good in the first three months of this year.

The abrupt decline in railroad credit, therefore, is a very recent event, but that there has been such a decline, more particu-
106 larly in the case of overlying and refunding bonds, has been clearly shown. Even if the showing made by the committees

representing the security holders be discounted somewhat, the situation is still ominous. That it reflects a present loss of confidence in and distrust of the railroad securities available for marketing purposes, as a reliable and stable investment, cannot be gainsaid, and if this distrust is prolonged for any considerable period of time the results are likely to be very serious, both in their immediate effect on the railroads themselves and in their indirect effect upon the financial situation generally.

We are not unmindful of the needs of the carriers as to proper maintenance. Operating expenses in 1930 declined from the average of the preceding years by approximately $600,000,000, or 13.4 percent. There was a further decline in the first 6 months of 1931, as compared with the similar period of 1930, amounting to $357,000,000, or 17.2 percent, making an aggregate decline of 28.3 percent under the average of the years 1924–1929, inclusive. To effect these decreases in operating expenses it was necessary to limit maintenance. The aggregate expenditure for maintenance of equipment, way and structures in 1930 was $347,000,000, or 16.7 percent, below the average of the six-year period 1924–1929, inclusive. The combined maintenance of equipment, way and structures in the first six months of 1931 was $192,000,000, or 20.8 percent, lower than that in the similar period in 1930. The maintenance expenditures in the first half of 1931, were, therefore, below the average of the years 1924–1929 to the extent of 34 percent, which on annual basis would be approximately $705,000,000.

The decline in credit has been due primarily to the shrinkage in railroad earnings caused by loss of traffic, a falling off, roughly speaking, from about 1,000,000 carloadings per week to about 700,000, to say nothing of the equally serious loss in passenger traffic. That this decline is due chiefly and predominantly to the business depression we have no doubt. There are few now living and active who have had experience with a depression at all like the present one. It has been forgotten that in such depressions the railroads always suffer very severely. The industries which suffer most severely are those which produce largely capital equipment, such as the iron and steel industry; next comes the railroads; then the industries which produce primarily consumers' goods; and the public utilities suffer least of all. On the other hand the reaction, as prosperity returns, is in reverse order. But in this instance the distrust in railroad securities inspired by the effects of depression has been much accentuated by the rather sudden awakening to the fact that the railroads are now faced by serious competition from other, largely
107 new, and developing means of transportation. And it has been further intensified by the widespread publicity which the railroads and the holders of their securities have deemed necessary in the pursuit of restrictive and regulatory legislation for the other forms of transportation and the proposed rate increase. The final result is that the situation now has in it the element of panic.

This overshadowing pessimism, like the optimism of 1928, is undue, and will be corrected in the natural course of events. But in

the meantime it is a fact which must be reckoned with. The question is whether a 15 percent increase in freight rates is an effective, reasonable, and lawful way to meet the situation.

It is not inappropriate to say that we approach this question with a background of experience with railroad rates, and the conditions under which they are made and can be maintained. We deal with hundreds of rate complaints every year, and in recent years have, in addition, carried on most extensive investigations of class rates and the rate adjustments on particular commodities. Evidence as to commercial and industrial conditions has been prominent in all of these investigations. We have also made extensive inquiries into motor transportation and are informed in regard to transportation by waterways and pipe lines, and we know the extent to which the railroads have reduced rates to meet such competition.

The carriers draw a parallel between the present situation and that which existed in 1920 when a general increase in rates was authorized. Conditions then prevailing were radically different from those which exist today. In 1920 business was prosperous and commodity prices were relatively higher than railroad rates. Taking 1916 as a base, the year when revenue per ton-mile reached its lowest point, but a year of marked railroad prosperity, the statistics of the Bureau of Labor show that the wholesale prices of all commodities had risen 62.1 percent in 1919 and 80.6 percent in 1920. Prices of farm products were 86.7 percent higher in 1919 and 78.6 percent higher in 1920. On the other hand, in 1919, the year preceding the 1920 increase in railroad rates, revenue per ton-mile was only 37.3 percent higher than in 1916. Contrasting this showing with 1930, in that year commodity prices generally were only 0.9 percent higher than in 1916 and farm products 4.6 percent higher, whereas revenue per ton-mile was 49.8 percent higher than in 1916. Continuing the downward movement, commodity prices generally in June 1931, were 18.1 percent lower than in 1916 and the prices of farm products 29 percent lower, whereas railroad rates remained practically stationary at the 1930 level.

In 1920 the railroads faced an emergency, but it was a very different emergency from that which exists today. They had passed
108 through the stress and strain of the War period and ensuing labor strikes, with the result that their properties were in poor physical condition and operation was demoralized. Shippers were crying for good service and quite willing to pay the price of higher rates. There was no contention that an increase would curtail traffic. In addition the railroads were in unprecedented need of new capital. Interest rates were very high, and many of the soundest railroad companies were borrowing from the Government at 6 percent to meet pressing needs for cash on our certificate that funds could not be obtained from other sources. By way of contrast, service is now excellent and also the physical condition of the properties, although the present curtailment of maintenance may, if continued, change

this latter situation. Instead of inadequate equipment and facilities, the railroads now have a superabundance of both, many cars and locomotives being in storage in good physical condition. Nor will refunding needs be great in the immediate future. The maturities during the next 4 years are as follows:

Year	Bonds	Equipment obligations
1932	$70,299,513	$110,782,506
1933	187,697,740	107,484,752
1934	265,945,749	104,658,536
1935	105,585,066	101,714,545

While the credit of the railroads is at a low ebb, it is also true that for the present and some time in the future the needs for new capital are not likely to be of commanding importance.

In some respects the situation in 1922, when rates were reduced 10 percent, is more nearly parallel with that now existing. The country was then in a state of business depression and traffic had fallen off. Commodity prices had dropped, so that generally they were only 13.1 percent higher than in 1916, and the prices of farm products were only 11.1 percent higher. In 1921, on the other hand, revenue per ton-mile was nearly 80 percent higher than in 1916. The following extracts from our opinion in Reduced Rates, 1922, supra, may be considered in the light of the fact that if an increase of 15 percent should now be made effective, railroad rates on most commodities would be somewhat higher, even, than they were in 1921:

"The carriers contend that the increased rates were not even an important contributing factor in the lessening of traffic in 1921, and that reduction in rates will not restore normal traffic. They do not, however, advocate rate increases as a means to increase net revenue. They admit that rates are too high and must come down, but they insist that rates cannot be further reduced until the costs of transportation are further reduced (page 704).

109 "It is generally recognized that existing high rates are a burden upon commerce, and many shippers insist that they are forcing movement to other forms of transportation, tend to restrict traffic, and in some instances to prevent particular movements (page 705).

"It is our duty to initiate such rates as will enable the carriers to earn as nearly as may be a fair return, qualified as provided in the act. In 1920 we authorized large increases in freight rates and passenger fares designed to produce the necessary revenues under the conditions then prevailing. There was then little doubt of the ability of industry to bear the increased charges. The situation has since changed. The country has been passing through a period of abundant supply and slack demand, in which prices at the source have

fallen off sharply. High rates do not necessarily mean high revenues, for, if the public cannot or will not ship in normal volume, less revenue may result than from lower rates (page 732).

"Shippers almost unanimously contend, and many representatives of the carriers agree, that 'freight rates are too high and must come down.' This indicates that transportation charges have mounted to a point where they are impeding the free flow of commerce and thus tending to defeat the purpose for which they were established, that of producing revenues which would enable the carriers 'to provide the people of the United States with adequate transportation' (pages 732–33).

"Manifestly the depression of 1921 resulted primarily from causes other than transportation charges. But it does not follow that under present conditions existing high rates do not tend to retard the return to a more normal flow of commerce. Deflation has taken place to a greater or less extent in wages and origin prices of commodities in nearly all branches of industry but most transportation charges are still near the peak (page 733).

"We are of opinion that general reduction in the rate level, as substantial as the condition of the carriers will permit, will tend not only to lessen the transportation burden but also to equalize and stabilize the conditions under which commerce and industry are carried on, with consequent fuller assurance to the carriers of realizing the fair return contemplated by law (page 734)."

As above indicated, commodity prices generally, and particularly the prices of farm products, are very materially below the pre-war level and there is no upward tendency, whereas railroad freight rates are much above a pre-war level and the proposed 15 percent increase would place them, broadly speaking, at a pinnacle in railroad history. It follows irresistibly that freight rates, even now, constitute a greater relative burden upon industry than ever before, and at a time when industry has gravely impaired stamina to sustain the burden. There is diligent search for means of saving every cent possible in expense of distribution.

That there are important opportunities for such saving which already have been utilized in substantial degree the record amply shows. Waterway competition is not a new thing with the railroads, but it was greatly stimulated by the opening of the Panama Canal. The steamship lines which operate through that canal, although not subject to any effective public regulations, are not increasing their rates but on the contrary have been reducing them as a result
110 of intense competition. This waterway competition is now a controlling factor on most transcontinental traffic, not only between the costs but also reaching far inland. Pacific coast lumber, for instance, moves extensively by rail as far as the Middle West from eastern ports which it reaches by boat through the Panama Canal. As yet the boats have not been a controlling factor in the fruit and vegetable traffic, but certain of them, anticipating some increase in rail rates, are proposing to shippers that they will install

refrigeration system if traffic is offered. This would be a menace to rail traffic if rates are increased. Besides the Panama Canal traffic, there is important waterway competition along the Atlantic coast and Gulf, on the Great Lakes, on the Mississippi and Ohio Rivers, and on the Hudson River and New York barge canal. Very important movements on these waterways are of petroleum and its products, coal, newsprint, sulphur, and grain. Import traffic brought by water from foreign countries to our ports often menaces domestic movements, as in the case of wood pulp, petroleum, nonferrous metals, cement, coal, sugar, and iron ore.

Movement by truck is a new form of competition which has been developing with great rapidity. It has been principally effective on less-than-carload traffic, and relatively short hauls of such commodities as livestock, cotton, cement, sand and gravel, gasoline, fruits and vegetables, and general merchandise; but it is continually extending to more and more traffic, and for longer distances, as trucks and trailers are enlarged and highways improved. At present it is aided by prevailing low prices for gasoline and rubber and the oversupply of labor. In addition to rates, advantages which it offers to the shipper are in rapid and flexible service, store-door receipt and delivery, the transportation at carload rates of much smaller lots than are possible by railroad, and elimination of costly railroad packing requirements. The carriers introduced evidence to show that it would be feasible for the trucks to divert only a comparatively small amount of additional tonnage, even if rates were increased. But without exaggerating the menace of this form of competition, we are convinced that the carriers have underrated it, and that its possibilities are materially greater than they are prepared to concede.

For a long time transportation of crude oil by pipe line has exerted a controlling force on many railroad rates on both crude oil and gasoline. To this competition has now been added pipe lines for the extensive transportation of gasoline and natural gas. This form of competition has progressed to an astonishing extent, and it seriously affects, not only rail movement of petroleum and its products
111 and the rates thereon, but also rail movement and rates on coal, both bituminous and anthracite. In addition, so far as coal is concerned, movement by rail has been substantially curtailed by the construction of central power plants, both water power and steam. While the latter use coal, they consume it with maximum economy and often obtain it from short-haul sources, distributing their own electric power widespread by transmission lines.

Nor are these competitive means of transportation by any means the only factors tending to lessen traffic which must be considered in connection with a relatively high level of freight rates. The evidence before us amply shows that the tendency of such a level is to localize industry and also impel the use of substitute products. It is the long-haul producer demanding the maximum of transportation service who suffers most severely from high rates. The advantage of the short-haul producer is greatly accentuated, and in con-

sequence a tendency rapidly develops to relocate plants or establish branch plants and warehouses. And these new plants or subsidiary means of distribution are inevitably located not only with a view to shortening the haul, but also with an eye to competitive waterway and truck opportunities. That such a tendency in industry is rapidly developing the evidence before us plainly indicates. And there is a similar tendency to use, where available, substitute products which require less transportation in their distribution. This is particularly true of lumber and coal, but it affects other industries as well.

However sympathetic one may be with the plight of the railroads and their need for additional revenue, such sympathy cannot with benefit to anyone be carried to the point of a refusal to recognize and face facts. The facts set forth above show beyond question that there are elements of plain peril to the railroads in such an increase in freight rates as they propose at the present time. The chief dangers are (1) that at a time when transportation costs are of vital consequence to every industry it will simulate new competitive forces already rapidly developing, (2) that it will alienate or impair the friendly feeling toward the railroads on the part of the people of the country which is essential to adequate legislation for their protection and the proper regulation of all forms of transportation in the public interest, and (3) that it will disturb business conditions and an already shell-shocked industry, and accelerate the tendency toward a localization of production. It should be borne in mind that traffic once lost to a competitive agency is far more difficult to regain than it is to hold before it is lost. And it should also be noted that disturbance to industry would be caused not only by the immediate increase in charges, but also by the slow process of inevitable readjustment to a lower level of rates which would be
112 necessary in many instances and which the railroad executives themselves concede that they anticipate.

We have often referred to the fact that we are not managers of the railroads and have taken the position that we ought not to interfere with those who are entrusted with management on matters which are not controlled by law but must be determined in the last analysis by wise administrative policy and judgment. That is still our view. But here reliance upon the judgment of the executives as to the revenue effect of an increase in rates is much weakened by their failure to adduce any substantial reasons for their judgment and the definite withholding of the best available information on this point in their possession, namely, the information of their traffic departments. The excuse that this would have prolonged the hearings unduly is not, in our judgment, an adequate answer. There are competent traffic officers in all the districts who represent the carriers collectively and could have been used as a means of concentrating and assembling this information. Not only did the carriers fail to present such witnesses, but in several instances they refused to produce traffic officers whom protestants wished to call to the stand

for the purpose of proving their case in opposition. In addition we have the evidence gained by experience with the numerous voluntary reductions which have been made, often below maximum reasonable rates fixed by us.

On the other hand we have a mass of definite and concrete evidence from the shippers on this point of revenue effect which stands in the record uncontradicted by anything other than general assertions. Five of our members heard this evidence, although none heard it all, and they had the opportunity of appraising the character and sincerity of the witnesses. In our opinion this evidence is entitled to great weight.

We also have a mass of definite and concrete evidence from shippers in regard to the general industrial collapse and the condition of individual industries. This evidence also stands uncontradicted, and, as has already been indicated, it shows beyond dispute that the situation of the railroads with respect to earnings is paralleled throughout the industrial world, and that many particular industries are in much worse plight. This is especially true of agriculture and preeminently true of the grain farmer. The present prostration of a large part of agriculture has seldom if ever been equalled in the history of the country.

Upon the evidence, therefore, it is our conclusion that a 15 percent increase in all freight rates and charges would increase revenues, if at all, only temporarily and that its ultimate effect, not very long postponed, would be to harm rather than help the rail-
113 roads. It is similarly our conclusion that such an increase would raise the rates upon many kinds of traffic above a just and reasonable level. This latter conclusion applies particularly to the products of agriculture, including livestock. We are advised that the committee representing the cooperating State commissions has reached the same conclusions.

It does not follow, however, from the conclusions above set forth that no increase in rates should be made at this time. As a result of investigations extending over many months we have prescribed, effective December 3, 1931, maximum reasonable rates on class traffic in official and western trunk-line territories and between those territories whose net effect we believe will be a substantial increase in revenue, unless diversions to trucks attain unanticipated proportions. We have also prescribed maximum reasonable rates throughout the country on furniture, effective February 25, 1932, which may produce increased revenue, although the danger of diversion to trucks is greater in the case of furniture than in the case of class traffic taken as a whole. We have also prescribed maximum reasonable rates on livestock in the western district, effective January 25, 1932, which should increase the revenue from this traffic in western trunk-line territory, where the revenues of the railroads have been particularly low. A similar revision, in general upward and effective December 3, 1931, has been prescribed in the case of petroleum and petroleum products.

In addition to these pending revisions and others which are in progress on our docket, we believe that the traffic departments of the railroads should address themselves to the task of making such changes in the rates on particular kinds of traffic as will, in their judgment after careful analysis of all attendant circumstances, produce additional revenue and which can be supported as reasonable under existing conditions. This does not necessarily mean increases in rates. It is quite likely that there are now many rates which will produce more revenue if they are reduced, and we include in this category rates which we ourselves have prescribed as maxima. Some such rates have already been reduced, but we fear that there is at times a reluctance on the part of traffic officers, because of possible contingent effects, to cut below these rates even when they believe that the result would be to railroad advantage. But in addition to reductions it is not at all unlikely that there are a considerable number of rates which can reasonably be advanced substantially, even under present conditions.

If tariffs are filed, in accordance with this suggestion, proposing changes in rates upon particular movements or kinds of traffic, we shall be guided, in determining whether they shall be sus-
114 pended, not only by the statements filed in support and protest, but also, in part, by our own general knowledge and the record in this proceeding as bearing on the particular kind of traffic in question. It should be noted that the protests which we are here considering do not go to evry form of traffic. And to the extent that suspension proceedings are initiated, we shall expedite their disposition.

But at best a process of rate readjustment of the kind above described is slow, and in our judgment it will not fully meet the needs of the present situation. The further step which we are now about to propose is offered for the consideration of the railroad executives in the im'ediate emergency, and only as a temporary measure of relief. It is motived by the thought that the distrust of railroad securities is rapidly gaining such elements of panic that a slight charge on the traffic of the industries of the country best able to stand it may justifiably be imposed, through freight rates, for the purpose of increasing confidence and averting developments which might further disturb an already tremendously shaken financial situation, and to avoid impairment of an adequate system of transportation.

This plan is outlined in the appendix. It is designed to avoid imposing burdens on industry which cannot reasonably be borne under present conditions, to limit the danger of diversion of traffic to other forms of transportation, and to disturb business conditions as little as possible by preserving, very generally, existing rate relations. Therefore certain commodities have been excluded from any increases and the increase has been tempered on others. The basis has been made as definite as possible in order to minimize disputes,

and as simple as possible in order that the increased rates may be made effective speedily. The increase is in cents per 100 pounds or amounts per car, subject to a fixed percentage maximum limit. Except for very short hauls affected by this maximum, it is in uniform amounts, so far as particular kinds of traffic are concerned. The abnormal conditions now existing distinguish the situation from that before us Increased Rates, 1920, supra, wherein we discussed the respective merits of percentage and flat increases. We propose to limit the increase to a period ending March 31, 1933. Its continuation after that time will depend upon conditions then existing.

As has been shown, the carriers and holders of their securities stress the credit situation. As a whole, earnings are inadequate, yet the earnings of certain of the carriers are ample to support their credit. The securities of even such carriers suffer from the distress of othe's not so fortunate. The increases which we propose would, without further provision for the allocation of the resulting revenue, to a certain degree help the carriers now in need, but would
115 go, in part, to carriers now securing revenues adequate to sustain their credit, and as to which no emergency exists. They would not afford aid in maintaining an adequate transportation system for the country in proportion to the burden imposed on the public.

The advisability of pooling the earnings resulting from any increase granted have been discussed of record. Assuming that the credit of the railways is the prime reason for this application, the suggestion has merit. The standing of railroad obligations and the consequent credit of the carriers, even those enjoying adequate earnings, will be improved if a plan can be devised which will give reasonable assurance that fixed interest obligations, not now in default, can be protected generally from default.

The applicants apparently recognize that at this time it is futile to increase rates with the object of reaching 5.75 percent on the value of their properties as a whole. The practical limitation of what the traffic will bear and continue to move by rail must be given consideration. Clearly any practicable increase, unaccompanied by a pooling provision, might not prevent threatened default in the fixed interest obligations of some of the carriers. On the other hand, a smaller increase in the aggregate revenue, marshalled for the benefit of the carriers in need, will tend to stabilize the industry. We shall provide for such marshalling.

We do not find that we are justified on this record to attempt, by a rate increase, to protect the margin of one and one-half times fixed charges set by the New York law. To provide so far as practicable that actual interest charges be met is justified.

The plan outlined in the appendix we estimate will produce between one hundred million and one hundred twenty-five million dollars increased revenue on the basis of present traffic if applied both State and interstate. This should cover deficiencies in interest

on fixed interest obligations with a substantial balance left over. The above estimate does not include increases in revenue which should accrue to the carriers during the coming year from the outstanding orders of the Commission which have been mentioned above.

Many difficulties will have to be met in working out the details of a plan for the marshalling of the fund derived from the increase authorized and for the distribution of that fund in the first instance among the carriers who fail to earn their interest charges in proportion to their deficiencies. We are convinced that these difficulties can be met. A plan to that end should be worked out by the carriers and submitted for our approval. In such a plan appropriate provision will have to be made to take care of variations in maintenance, depreciation, and other operating charges. Perhaps the depreciation and maintenance charges of the year immediately preceding
116 the time of computation should be prescribed as the maxima of those accounts in determining deficiencies in earnings. Appropriate provisions should be made as to the accounts of carriers reporting separately but operated as part of a system. Other similar adjustments may be necessary.

Some carriers have obligations that are already in default, some are now in receivership, and some derive less than 50 percent of their revenue from freight transportation. Such carriers should neither contribute to, nor receive from, the fund created. and they should be allowed to retain the full amount of the revenue accruing to them from the increased rates. The applicants should set up the machinery for operating and should operate the plan. At the end of six months or other appropriate interval any balance remaining in the fund so created should be distributed to the carriers in the proportions in which earnings accruing on their properties have contributed to it.

The increase provided for in the appendix will be conditional upon the submission by the carriers, on or before December 1, 1931, for our approval under the Interstate Commerce Act, of such a plan as is above described for the division among them of the gross proceeds derived from the increase. The plan submitted should provide that the revenues received from such increases should be earmarked and should be used for the purposes and in the manner above provided, and not otherwise. The increases herein proposed should be accepted as an entirety. If, for competitive or other reasons, the carriers decrease any of the rates so increased, the amount of the decrease should be taken from the basic rates rather than from the earmarked increases provided herein. Upon such submission and approval we shall grant the necessary authority under section 6 for filing the blanket supplements, and those will be permitted to take effect without suspension, subject to the proviso that we shall reserve discretion to require minor changes in the details thereof, and that the resulting rates will in all respects be subject to investigation and determination as to the lawfulness of particular rates or schedules of rates, as provided by the act.

The railroad future

It is not enough in this report to deal merely with the 15 percent increase proposed and our substitute form of temporary relief. Something should be said of the railroad future and what can be done in a more enduring way to protect and stabilize it. The railroads now furnish the backbone and most of the other vital bones of the transportation system of the country, and we believe this will be the situation for a long time to come. We are not impressed
117 with the thought that they are doomed, in anything like the near future, to go the way of the stage coach and canal.

The most effective remedy for the immediate ills of the railroads is the economic recovery of the country. The present low earnings are not the result of low rates but reflect general industrial conditions. The earnings will continue to reflect those conditions as business improves, just as they have in the past. While the tide may be slow in turning, there is no more reason for thinking that business will not improve than there was in 1928 for thinking that depressions were a thing of the past and that we were in an era of permanent prosperity. Public emotion swings from one extreme to the other and there is nothing more volatile than the emotions of the investing public. When railroad earnings take a sharp turn upward, as in due time they will, railroad credit will also rise.

But there are many things which can be done to improve the situation, some of them by Congress, some by State legislatures, some by this Commission and the State commissions, and some by the railroads themselves.

An important step in the repeal of section 15a and the substitution of a better section designed to accomplish the same general purpose. We recommended such legislation last year in a special report to Congress and shall renew the recommendation in our annual report this year. The present recapture provisions impose in their enforcement a vast expenditure of time and money upon both the Government and the railroads, they provoke litigation over complicated questions of valuation and accounting, they encourage extravagant expenditures by the more prosperous companies when times are good, they hang like a cloud over the credit of many companies when times are bad, and under the present law there is no effective way of using the funds to public advantage if they are recaptured. The problem presented by the varying earnings of different railroads can better be met in other ways, such as consolidations, pooling arrangements, and the adjustment of divisions.

Nor do we believe that the present provisions of paragraph (2) are desirable in all respects. They cherish elusive hopes that by mere changes in rates railroad earnings can be made stable regardless of economic conditions. In our special report to Congress we suggested a substitute for this paragraph which we believe will better serve the end desired. It is short and there is no better way of explaining its provisions than by inserting it here:

"As a guide in adjusting the general level of rates, in the exercise of its power to prescribe just and reasonable rates, the Commission shall from time to time determine and make public what percentage of the aggregate of the contemporaneous rate bases of the operating carriers constitutes a fair return thereon. In making such
118 determination it shall give due consideration, among other things, (1) to the present and reasonably prospective transportation needs of the country, (2) to the necessity, in the public interest, that the carriers shall be able to establish and maintain a credit sufficient to attract the capital required to meet these transportation needs, and (3) to the necessity, in the public interest, that the carriers shall furnish transportation service to shippers and travelers at the lowest rates consistent with adequate service and the meeting of the transportation needs. Having determined such fair return, the Commission shall endeavor to adjust the general level of rates so that operating carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will under normal conditions and under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment, earn an aggregate net railway operating income equal, as nearly as may be, to such fair return. The fact that such aggregate net railway operating income falls below such amount in times of economic depression or rises above it in times of economic prosperity shall not necessarily be regarded as a reason for raising or reducing rates, as the case may be; but the duty of the Commission in the exercise of sound discretion shall be to maintain so far as possible a general level of rates which over a period of years will produce earnings consistent with the principles, above set forth, to be observed in the determination of the fair return; and the Commission shall initiate, modify, establish, or adjust rates to the extent that it may find necessary in the full performance of the foregoing duty."

We believe that this substitute emphasizes the public need for maintaining railroad credit quite as strongly as does the present paragraph. It will be noted also that it contains recognition of the principle that inasmuch as railroad earnings must inevitably fall below normal in times of depression, they may properly be permitted to rise above normal in times of prosperity. Such recognition might well be supplemented by a provision that some portion of surplus accumulations shall be held in liquid form. Present experience shows that no matter how large such accumulations may be (and they have been large in the case of the railroads during the past decade), they may be of comparatively little use in meeting immediate deficiencies in earnings, if they are invested in railroad property, as they normally are. So invested, they can be converted into cash to replenish the treasury only by the issue of securities, and these cannot be issued when credit is impaired.

Congress and the State legislatures should also, we believe, direct their attention to the proper regulation in the public interest of all

competitive forms of transportation. In this we include such restrictions on the size and weight of trucks and their lading as public safety may dictate, such taxation of trucks and busses as may be necessary to impose upon them a fair share of the burden of the public highways which they use, such supervision of truck and bus common-carrier lines as may be necessary to avoid destructive and wasteful competition, and such regulation of their rates and
119 service as the public interest may require. We are here stating only very broad principles, the practical application of which must be governed by the definite ascertainment of facts many of which are now in controversy. Our purpose for the moment is only to direct attention to matters which are in urgent need of legislative consideration. The facts in regard to motor competition we helped to develop some years ago in a report made after special investigation. We hope in the near future to supplement these facts and bring them up to date, together with specific recommendations for legislation, in a report on the coordination of rail and motor service which is now in progress.

What we have said as to the trucks and busses applies also to the waterways. It is strongly urged by the rail carriers that the water carriers are not bearing their fair share of the burden of the waterways constructed or improved at public expense, on which they operate. Here again the facts are controversial and must be ascertained. But the contention of the rail lines presents a matter for unbiased investigation, which may be in need of correction if fair competitive conditions are to prevail. The same may be said of the public regulation of the port-to-port rates of common carriers by water, which are now subject to no effective regulation. The lack of stability and apparent demoralization from time to time of these rates, particularly those of the lines operating through the Panama canal, at least suggest that some greater measure of public control may be in the interest of the water carriers themselves as well as in the general interest. History shows that this was true of railroad rates, as most of the railroads now concede. These matters need present legislative consideration.

The so-called car-forwarding companies present a situation in the transportation field which calls for public regulation, as we pointed out and recommended in our last annual report. Here there seems no difference of opinion on the point. It is not unlikely that the service performed by these companies can, with profit to the railroads and advantage to the country, be made a definite part of railroad service.

The railroads, as cities expand and public highways multiply in number and use, have been and are being called upon to invest great amounts of capital in alterations of their properties which are often, from a strictly railroad point of view, very largely nonproductive. The burden of these expenditures must be borne by the public in one way or another, but the question arises whether this burden is being apportioned fairly. To the extent that it is caused by other than rail-

road needs and does not increase the traffic of the railroads or save them expense, it may be that this burden should justly be shifted from the shoulders of railroad users.

120 Railroad managements face new conditions which compel changes in methods of operation, manner of service, and price policies. It is a situation which frequently confronts private, competitive industries, and they have become accustomed to such readjustments by force of necessity. It is different with the railroads. Although they have never had a complete transportation monopoly, they have in the past occupied the field with sufficient exclusiveness so that, apart from competition with each other, their habits of thought are less flexible and not so well adapted to facing and meeting new competitive conditions. This they must now do. The spur of present adversity will no doubt help to that end.

Foremost among the problems to be solved is that presented by the passenger service. Broadly speaking, this service for the country as a whole fails by something like $450,000,000 annually to contributing its proportionate share toward taxes and return on railroad property. The close similarity of this figure to the amount of money which the carriers estimated that they would realize from the 15 percent increase, if no loss of traffic resulted, is striking. In other words, if the carriers were able to conduct the passenger business as profitably as the freight business, they would even now, under adversity in a period of great depression, be earning enough to stabilize their credit situation. The freight business as a whole is doing reasonably well, present conditions considered. The carriers in this record pointed out the substantial curtailments of passenger service which have been made in an endeavor to reduce losses. They have also undertaken experimental service in the hope of recovering profitable patronage. But much more drastic measures will be necessary if the staggering deficit incurred by that service is to be reduced to bearable proportions. A little has been done in the pooling of competitive train service by rival lines, but we believe that the opportunities in this direction have by no means been exhausted. Much more can be done under existing law. On some lines it may be necessary for the companies to retire from the passenger business entirely. On others it may be that better service with lighter trains at greater speed and at lower fares will revive patronage and reduce expense. Our knowledge is too inadequate to enable us to specify the remedies which must be applied. But plainly the situation is in need of drastic attention.

So far as freight service is concerned, the railroads have so many and so great inherent advantages of economy, particularly in the case of the longer hauls and the heavier traffic, that we cannot believe that they will not be able to withstand the competition of the motor trucks. It may be that some traffic must permanently be surrendered to the trucks, but for the most part it is traffic on

121 which the railroads have always claimed that they lost money. To meet this situation effectively, however, it is evident that

radical changes in service and rates must be made. Means, mechanical and otherwise, of making the necessary changes in service are already beginning to appear in the foreground in rapidly increasing volume. They will require trial and test to demonstrate their efficiency, but that some of them will at length pass through the experimental stage to successful adoption we have no doubt. So far as rates are concerned, it is clear that the present structure has developed under principles and theories which gave no thought to the competitive agencies of transportation which now exist. As a result, the rates often open a door to effective competition which might well be closed. It is evident that the traffic departments must give new thought to the rate structure in the light of existing conditions.

The new competitive conditions make it necessary, also, for the railroads to cooperate more efficiently with each other and reduce the waste, both in service and in rates, which has marked their own competition. That this waste is of very large proportions is clear. Many specific instances have been brought to our attention. That it can be minimized we also have no doubt, but that this will require a greater degree of cooperation than the railroad executives have yet been willing to put into practice is plain. Such cooperation, which we believe the times make essential, would also be of great advantage in carrying on adequate research and experimentation.

The record shows that in the past decade the railroads have made great strides in improving their service and at the same time operating with greater efficiency and economy. But what they have done in this direction has largely followed lines which developed under conditions different from those which now prevail, and it has been characterized by a continual intensifying of their own competition. At a time when as an industry they have new enemies to face, their warfare with each other has grown more bitter, so that economies in operation have been offset in part by the growth of competitive waste.

All this is contrary to the spirit of the Transportation Act, 1920. Congress then looked beyond the individual railroad to the concept of a national transportation system. It pointed the way in the consolidation provisions to the reduction of competitive wastes. It went to the extreme of removing the barriers of restrictive Federal and State antitrust legislation which might otherwise stand in the way. Short of consolidations, it opened wide the door to agreements for the pooling of service and of revenue, whenever it could be shown to our satisfaction that such agreements were in the public interest.

Much has been accomplished in the way of unification, but
122 much remains to be done, and the pooling provisions of the law stand almost unused. Further progress along the lines pointed out by Congress will aid in bringing about the cooperation which is essential to railroad salvation. But the problem cannot wholly be solved in this way, nor is there need that cooperation should be subordinated to the consolidation program.

In the meantime we have under way an investigation, Ex parte no. 104, into such railroad practices as may adversely affect net earnings, and we shall pursue this inquiry with diligence.

The committees representing the security holders have suggested the formation of a special commission to consider the needs of the railroad situation. Such procedure has been followed in England, and it is receiving consideration in Canada, whose problems are very like our own. We have no authority to constitute such a commission and are, therefore, not in a position to follow up this suggestion.

Commisisoner Tate concurs in those portions of the report and order which dismiss the petition of the carriers for a fifteen percent increase in freight rates and which discuss the desirability of attention on the part of the carriers to economies and to competition with other means of transportation and the probable desirability for seeking some character of legislative relief; and further in the portions discussing a plan to be worked out so that application of any increase be so applied that interest on bonds of all railroads, weak or strong, be paid, at least pro tanto; but he dissents from those portions increasing any rates in any respect or in any amount in this proceeding.

An appropriate order will be entered denying the application.

123 APPENDIX

Plan for increasing freight rates

In the tables which follow the generic descriptions of commodities or commodity groups are those specified in the order of the Commission, Division 4, of November 22, 1927, In the Matter of Freight Commodity Statistics. They cover the specific items customarily included by the carriers in their reports to the Commission under each numbered description.

The plan is that on commodities included under the following numbered descriptions there shall be no increase:

Number	Description
10	Wheat.
20	Corn.
30	Oats.
40	Barley and rye.
41	Rice.
42	Grain, n.o.s.
50	Flour, wheat.
51	Meal, corn.
52	Flour and meal, edible, n.o.s.
61	Mill products, n.o.s.
70	Hay and alfalfa.
71	Straw.
90	Cotton in bales.
91	Cotton linters, nolls, and regins.
100	Cottonseed.
120	Apples, fresh.
122	Berries, fresh.
124	Grapes, fresh.
125	Peaches, fresh.
127	Fruits, fresh, domestic, n.o.s.
130	Potatoes, other than sweet.

Number	Description
150	Beans and peas, dried.
162	Flaxseed.
163	Sugar beets.
170	Horses, mules, ponies, and asses.
180	Cattle and calves, single-deck.
181	Calves, double-deck.
190	Sheep and goats, single-deck.
191	Sheep and goats, double-deck.
200	Hogs, single-deck.
201	Hogs, double-deck.
400	Logs.
402	Wood (fuel).
410	Ties, railroad.
443	Excelsior (wood) and sawdust.

On commodities included under the following numbered descriptions there may be an increase of $3.00 per car:

Number	Description
200	Anthracite coal.
300	Bituminous coal.
310	Coke.
320	Iron ore.
330	Copper ore and concentrates.
331	Lead ore and concentrates.
332	Zinc ore and concentrates.
333	Ores and concentrates, n.o.s.
350	Gravel and sand (other than glass or moulding).
351	Stone, broken, ground, or crushed.
392	Products of mines, n.o.s.
401	Posts, poles, and piling.
420	Pulpwood.
430	Lumber, shingles and lath.
431	Box, crate, and cooperage materials.
432	Veneer and built-up wood.
443	Products of forests, n.o.s., except excelsior (wood) and sawdust.
692	Furnace slag.

On commodities included under the following numbered descriptions there may be an increase of $6.00 per car:

Number	Description
390	Phosphate rock, crude (ground or not ground).
391	Sulphur (brimstone).
490	Iron, pig.
693	Scrap iron and scrap steel.
352	Stone, rough, n.o.s.
353	Stone, finished, n.o.s.
360	Petroleum, crude.
370	Asphalt (natural, by-product, or petroleum).
552	Artificial stone, n.o.s.

On commodities included under the following numbered descriptions there may be an increase of 1 cent per 100 pounds:

Number	Description
101	Cottonseed meal and cake.
110	Oranges and grapefruit.
111	Lemons, limes, and citrus fruits, n.o.s.
123	Cantaloupes and melons, n.o.s.
126	Watermelons.
140	Cabbage.
141	Onions.
142	Tomatoes.
143	Vegetables, fresh, n.o.s.
151	Fruits, dried or evaporated.
152	Vegetables, dried, n.o.s.

Number	Description
160	Vegetable-oil cake and meal, except cottonseed.
161	Peanuts.
164	Products of agriculture, n.o.s.
124 440	Rosin.
441	Turpentine.
450	Petroleum oils, refined, and all other gasolines.
451	Fuel, road, and petroleum residual oils, n.o.s.
452	Lubricating oils and greases.
453	Petroleum products, n.o.s.
540	Cement, natural or Portland (building).
550	Brick, common.
551	Brick, n.o.s., and building tile.
560	Lime, common (quick or slacked).
630	Ice.
640	Fertilizers, n.o.s.

On all other commodities, including all less-than-carload freight, there may be an increase of 2 cents per 100 pounds.

The increases set forth above are subject to the following provisos:

1. In no event shall the increase levied on any carload be in excess of 10 percent of the carload charges which would be assessed in the absence of the increase.

2. In the case of less-than-carload freight, no increase shall be assessed for hauls for which the applicable or corresponding class rates are assessed on a basis of not more than 175 miles, and the increase for hauls over 175 miles and not more than 250 miles computed in like manner shall be 1 cent per 100 pounds.

3. Where rates are stated in schedules in dollars per car and the increase, as shown above, is an amount per 100 pounds, the increase shall be $7.50 per car if such amount per 100 pounds is 1 cent, and $10.00 per car if such amount is 2 cents.

4. In the case of rates on petroleum products and on furniture, covered by the orders in no. 17000, parts 4, 4A, and 5, they shall not, on and after the dates when the rates covered by such respective orders become effective, exceed the maximum rates therein prescribed.

Switching and litherage charges

All switching charges may be increased 10 percent, subject to the exception that in the case of the Chicago switching district (Illinois-Indiana) the charges, on and after the date when the rates covered by the order in no. 19610 become effective shall not exceed the maxima therein prescribed.

Joint rates to and from foreign countries

It is not intended to increase the proportions of joint through rates to or from points in foreign countries accruing for the transportation in such foreign countries; the proportions of such rates accruing within the United States may be increased to the extent herein approved for domestic rates.

Boat lines

The increases herein suggested may in like manner be applied to rates of the boat lines subject to the act.

Combination rates

It is the intention to authorize but one increase on any particular through shipment, however the total rate is constructed or ascertained.

Fourth section departures

If the adoption of the different rates of increase herein suggested results in any violation of the aggregate-of-intermediates or long-and-short-haul provision of section 4 (1) of the act, the carriers should take prompt steps to remove the violation or promptly make applications for relief.

Rates prescribed and not yet effective

It is contemplated that the increases herein set forth will be superimposed upon the rates now in effect, whether established by order of the Commission or the voluntary act of the carriers (including rates held under investigation and suspension orders), and also upon rates prescribed by outstanding orders of the Commission not yet in effect, when and as the rates therein prescribed become effective, subject to the exceptions noted above.

By the Commission.

[SEAL] GEORGE B. MCGINTY,
Secretary.

125 *Exhibit C attached to bill of complaint, being copy of Commission's supplemental report and appendix thereto (179 I.C.C. 215)*

17317

Interstate Commerce Commission

Fifteen Percent Case, 1931

Ex Parte No. 103

In the matter of increases in freight rates and charges

Submitted November 28, 1931. Decided December 5, 1931

Upon further hearing of oral argument, former report, 178 I.C.C. 539, modified by vacating certain conditions attached to increases in rates authorized and by changing somewhat methods used in determining in each instance the amount of the increase.

Alfred P. Thom and J. M. Souby for Association of Railway Executives; Charles C. Paulding for Association of Railway Executives and New York Central Lines; Henry Wolf Biklé for committee of counsel for carriers; Luther M. Walter for New Orleans Public Belt Railroad; Charles E. Cotterill for Southern Traffic League; E. S. Gubernator for Lehigh Portland Cement Company; Herbert Fitzpatrick for Association of Railway Executives; T. D. Geoghegan for Southwestern Virginia, Incorporated, and West Virginia Live Stock Growers and Shippers; John E. Benton and Clyde S. Bailey for legal committee of western group, State commissions; R. C. Fulbright for Southern Pine Association; C. R. Marshall for Growers & Shippers League of Florida; and John F. Finerty for American Smelting & Refining Company, Kennecott Copper Mining Company, and National Sugar Refining Company.

Other appearances shown in the original report.

SUPPLEMENTAL REPORT ON RECONSIDERATION.

BY THE COMMISSION:

In the original report in this proceeding, 178 I.C.C. 539, we found that carriers subject to the interstate commerce act should be authorized to make comparatively small increases in rates for the transportation of certain freight articles for the purpose of increasing their operating revenues and thereby improving their credit and to enable them to maintain an adequate transportation system. An extensive investigation made by us in the premises, in which hearings were held in different parts of the United States, established that, by reason of the present depression and the rapid development since the depression began of other transportation facilities with which the carriers have been and are in competition,
126 the revenues had become depleted to such an extent as to threaten the ability of the carriers to continue to furnish such transportation services as the public needs and must have. The freight articles selected by us in this connection were those for the transportation of which we believed the rates could be somewhat increased without causing the traffic to be transferred to other agencies of transportation and without bringing about an undue disturbance in business conditions or transgressing the bounds of maximum reasonable rates.

However, we further found that these increases were justified only as a temporary, emergency measure, and primarily and principally to assist some of the carriers in connection with the payment of their fixed charges. We therefore stated that the increases, in the absence of action to the contrary taken by us, should expire on March 31, 1933, and that meanwhile the income therefrom should be kept separate from other operating income of the carriers, placed in a pool, and used in connection with the payment of fixed charges and for other purposes as described in our original report. In this connection, among other things, we said:

"Some carriers have obligations that are already in default, some are now in receivership, and some derive less than 50 percent of their revenue from freight transportation. Such carriers should neither contribute to, nor receive from, the fund created, and they should be allowed to retain the full amount of the revenue accruing to them from the increased rates. The applicants should set up the machinery for operating and should operate the plan. At the end of six months or other appropriate interval any balance remaining in the fund so created should be distributed to the carriers in the proportions in which earnings accruing on their properties have contributed to it.

"The increase provided for in the appendix will be conditional upon the submission by the carriers, on or before December 1, 1931, for our approval under the interstate commerce act, of such plan as is above described for the division among them of the gross proceeds derived from the increase. The plan submitted should provide that the revenues received from such increases should be earmarked and should be used for the purposes and in the manner above provided, and not otherwise. The increases herein proposed should be accepted as an entirety. If, for competitive or other reasons, the carriers decrease any of the rates so increased, the amount of the decrease should be taken from the basic rates rather than from the earmarked increases provided herein. Upon such submission and approval, we shall grant the necessary authority under section 6 for filing the blanket supplements, and those will be permitted to take effect without suspension, subject to the proviso that we shall reserve discretion to require minor changes in the details thereof; and that the resulting rates will in all respects be subject to investigation and determination as to the lawfulness of particular rates or schedules of rates, as provided by the act."

Our original report was issued October 16, 1931, and thereafter the carriers filed in our office a petition, in which they alleged, in substance, that the pooling plan provided for by us could not as a practical matter be applied, and requested us to permit them to
127 substitute therefor what has been referred to in this proceeding as a loaning plan, that is to say, they asked for permission to use the sums of money to be placed in a pool as aforesaid for the purpose of making loans, through an agency to be created by them, for the payment of fixed charges, etc., as had been described by us. They also asked us to make a few other comparatively unimportant changes in our original report.

After due notice to interested parties they were heard by us in oral argument in connection with the matters covered by the petition, and at that hearing counsel for the carriers contended that the impracticability of putting in force the pooling plan outlined by us results principally from the lack of authority on the part of representatives of some of the carriers to treat sums of money received for transportation services performed by such carriers as the property of other carriers and allow the latter to use those sums in paying

their fixed charges. Pertinent language used by counsel for the carriers in this connection is:

"Many of the directors of these railroad companies have been advised by their counsel that a vote to dispose of the earnings in question as a gratuity would, or might, render such directors personally liable to any objecting stockholder, and, in fact, there is substantial reason to apprehend that an effort to do so would at once be enjoined by stockholders and the whole matter be thrown into court, with a consequent delay that would in itself defeat the Commission's purpose."

Counsel for the carriers also pointed out that, in connection with the subject matter of pooling, the only authority specifically conferred upon us is contained in section 5 (1), which reads:

"SEC. 5. (1) That, except upon specific approval by order of the Commission as in this section provided, and except as provided in paragraph (16) of section 1 of this act, it shall be unlawful for any common carrier subject to this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid each day of its continuance shall be deemed a separate offense: Provided, That whenever the Commission is of opinion, after hearing upon application of any carrier or carriers engaged in the transportation of passengers or property subject to this act, or upon its own initiative, that the division of their traffic or earnings, to the extent indicated by the Commission, will be in the interest of better service to the public, or economy in operation, and will not unduly restrain competition, the Commission shall have authority by order to approve and authorize, if assented to by all the carriers involved, such division of traffic or earnings, under such rules and regulations, and for such consideration as between such carriers and upon such terms and conditions, as shall be found by the Commission to be just and reasonable in the premises."

128 Upon this subject, counsel for the carriers, among other things, said:

"That paragraph contemplates a pooling, under certain conditions, of the earnings of 'competing' carriers—of carriers which, for purposes of economy, parcel out between them services which all might perform, and justify it by pooling and dividing among them the revenues derived from all the services so parceled out. On the other hand, the pool here is to be contributed to by all the rail carriers, whether competing or not, and is clearly not a pool of the earnings only of competing carriers or of carriers bearing the same or similar relationship to the service. It not being within that section, there is not authority in law for such a pool, and the question of its legality must be determined on general legal principles."

In addition to making contentions as above stated, counsel for the carriers urged that use of the loaning plan will enable the carriers to accomplish the purposes we had in view when we provided for the use of the pooling plan, and at the same time enable the carriers to avoid the legal difficulties necessarily connected with the latter plan. Contrary views were expressed by counsel representing some of the shippers, but no such opposition was voiced by counsel representing any carrier subject to the interstate commerce act. In this connection, it will be observed that the rates to be paid by shippers will be the same under either plan.

We are not prepared to admit that the construction placed upon section 5 (1) of the act by counsel for the carriers is correct, but we realize that the language contained in that paragraph is not sufficiently definite to exclude differences in views concerning its meaning, and that for this reason the legal difficulties mentioned have at least some foundation upon which to rest. Also, we have no reason for treating otherwise than as made in good faith the representations on behalf of the carriers to the effect that they will use the sums of money, which are to be placed in a pool as hereinbefore stated, to accomplish the purposes described in our original report. It is further true that we are impressed by the absence, on behalf of any carrier, of opposition to the loaning plan mentioned. In addition to the above, we believe it to be pretty clearly indicated, by matters called to our attention in oral argument and otherwise developed in the course of this proceeding, that an agreement to adopt and put in force the pooling plan provided for by us cannot be obtained, and in the absence of such an agreement our plan could not be made effective, since, as above shown, we have no authority to require such pooling.

For the reasons above set forth, and because we desire to act promptly in this proceeding, in accordance with the duties imposed and the authority conferred upon us by the interstate commerce act, and avoid delays which will be injurious to the general public,
129 including the carriers, we hereby modify our original report to the extent of relieving the carriers from the necessity of complying with the pooling plan therein described. This will leave them free to apply in the premises their own loaning plan, but since use of the latter plan will not be pooling, within the meaning of that term as used in section 5 (1) of the interstate commerce act, and because loans by and between common carriers, as such, have not been included within the jurisdiction conferred upon us by Congress, we neither approve nor disapprove either the loaning plan or the agency the carriers say they expect and intend to use in making that plan effective. However, we rely on them to apply the funds to be derived from the authorized increases in rates in aid of financially weak railroads in accordance with the purposes expressed in our original report and in the instant application pursuant thereto and the arguments thereon presented.

We also hereby amend our original report to the extent of relieving the carriers from the restriction contained in language hereinbefore quoted which is as follows:

"* * * The increases herein proposed should be accepted as an entirety. If, for competitive or other reasons, the carriers decrease any of the rates so increased, the amount of the decrease should be taken from the basic rates rather than from the earmarked increases provided herein. * * *"

Objection has been raised to the imposition of the so-called double increase where there are movements subject to the act separated by an intermediate movement not subject to the act. This applied particularly to movements of ore and coal through lake and ocean ports. There are practical difficulties in the way of accomplishing this by general provisions such as are made in this report. Therefore shippers and carriers are left free to endeavor to work out this situation between themselves.

In the appendix under the caption "Switching and lighterage charges" we authorized certain increases for switching only. The omission of lighterage and floatage charges from the increases so authorized was unintentional. The same increases for these charges as for switching are authorized in the revised appendix hereto.

Because of certain practical difficulties that exist in determining distances and in view of the smallness of the increases, we have concluded, upon more mature consideration, to authorize an increase of 2 cents in all less-than-carload rates.

In the revised appendix hereto the articles originally made subject to increases of $3 and $6 per car have been made subject to increases in cents per 100 pounds or per ton, the assignment of the respective commodities to the respective lists having been made on an approximate weight basis.

130 The revised appendix also makes certain changes in the classification of commodities, the desirability of which has become apparent since our original report was issued.

LEE, Commissioner, concurring specially:

It was our view when the original report was adopted that, while the carriers had signally failed to justify their application for a horizontal increase in freight rates, their credit situation justified us in permitting the establishment of certain increases to enable the weaker roads to meet their interest requirements. We therefore told the carriers that we would permit them to make certain specified rate increases on condition that the funds realized therefrom should be pooled for the benefit of the weaker roads to the extent of their interest requirements.

The carriers now represent that there are certain legal objections to the conditions imposed by us for the distribution of the pooled earnings, and ask authority to make such distribution on a loan basis. To meet the emergency which now confronts the railroads, I am firmly convinced that our plan is preferable to the loan plan

proposed by the carriers. It is evident, however, that there is such opposition to our plan that the carriers will not be able to put it into effect. In this situation some of my brethren adhere to our original report. There is much in reason to supoprt their position. On the other hand, the majority allows the increased rates to be established without the imposition of any condition. After we found that no increase had been justified and permitted the establishment of slight increases only on the express condition that the earnings produced thereby would be used, to the extent necessary, to meet interest requirements and protect railroad credit, the majority now allows the increases without any condition or restrictive requirement whatever. As between these extremes, it is my position that, in view of the conditions in which the railroads find themselves, we should grant their application to the extent of permitting them to make the increases specified on condition that they loan to the needy carriers such portion of the fund resulting therefrom as may be necessary to meet interest charges. It seems to me, however, that such loans should be made at a nominal rate of interest and without security.

EASTMAN, Commissioner, dissenting:

The vital purpose which we sought to accomplish in the general interest through the pooling plan set forth in our prior report cannot be accomplished nearly as well by the plan which the
131 carriers propose. Nor, since the majority now leave the latter plan wholly within the discretion of the carriers, is there definite assurance that the purpose will be accomplished at all. No occasion exists for beating such a retreat. Our plan is both lawful and reasonable. There is no sound reason for discarding it in favor of the inferior substitute which is now proffered.

Owing to the brevity of the majority report, it is necessary to supply pertinent information in this opinion in order that the essential issues may be understood.

The original application of the carriers was for authority to increase all interstate freight rates and charges 15 percent. We reached the conclusion, upon the evidence presented, that such an increase "would increase revenues, if at all, only temporarily and that its ultimate effect, not very long postponed, would be to harm rather than help the railroads." We also concluded that "such an increase would raise the rates upon many kinds of traffic above a just and reasonable level." For these reasons the application was denied.

We pointed out, however, that it did not follow that no increase in rates should be made at this time. Some important increases we had already authorized, to become effective shortly. We stated our further belief that the—

"traffic departments of the railroads should address themselves to the task of making such changes in the rates on particular kinds of traffic as will, in their judgment after careful analysis of all attendant circumstances, produce additional revenue and which can be supported as reasonable under existing conditions."

If tariffs were filed, in accordance with this suggestion, we said that we would be—

"guided, in determining whether they shall be suspended, not only by the statements filed in support and protest, but also, in part, by our general knowledge and the record in this proceeding as bearing on the particular kind of traffic in question."

To the extent that suspension proceedings might be initiated, we promise to expedite their disposition.

Under ordinary circumstances, upon such a record as was before us, we would have stopped at this point and with this suggestion. It gave the carriers opportunity to mend the deficiencies of their case and propose increases, or other changes in rates, which could be justified. It gave assurance, also, that such proposals would receive sympathetic and expedited consideration. This opportunity still stands and will remain open.

132 The pooling plan

But circumstances were not ordinary, and therefore we did not stop with this suggestion. We made a further proposal "for the consideration of the railroad executives in the immediate emergency, and only as a temporary measure of relief." It was motived by the thought that the—

"distrust of railroad securities is rapidly gaining such elements of panic that a slight charge on the traffic of the industries of the country best able to stand it may justifiably be imposed, through freight rates, for the purpose of increasing confidence and averting developments which might further disturb an already tremendously shaken financial situation, and to avoid impairment of an adequate system of transportation.".

The plan was designed as an emergency measure in the hope that it would help the general financial situation with benefit to all concerned, and it sought to produce the maximum effect of this character consistent with the imposition of minimum burdens upon distressed industry and minimum disturbance of business conditions. To this end it appealed to a spirit of cooperation on the part of both shippers and carriers.

We did not propose increases in all rates, but only where we thought the burden could reasonably be borne with limited danger of diversion of the traffic to other forms of transportation. Nor did we propose increases in ratio to transportation service performed. To minimize disturbance of business conditions, we suggested increases on particular kinds of traffic which would be, generally speaking, in uniform amounts. Thus the short-haul shipper was asked to bear a much larger increase, in ratio to existing rates and transportation service rendered, than the long-haul shipper.

In like spirit of cooperation the railroads were asked to agree to a pooling plan. The emergency was a financial one and affected credit

primarily. This had been stressed both by the carriers and by their security holders. The earnings of some of the carriers were ample to sustain their credit, and as to them, considered individually, no emergency existed. It was created by the needs of carriers less fortunate but which, like the others, were essential parts of the national transportation system. Except for the danger confronting these less fortunate carriers, our emergency rate proposal would not have been made.

We thought it proper and appropriate, therefore, to ask all the carriers to agree to a plan whereby the funds derived from the emergency increases would be used in the first instance to poultice the sore spots which threaten the health of the national transportation system. We did not, however, seek to bring the carriers
133 to anything like a common level of earnings or to deprive those which were more prosperous of direct benefit from the increases. The pooled earnings were to be applied in the first instance merely to the prevention of defaults in fixed charges. The remaining balance, which we estimated would be substantial, was to be distributed in ordinary course. Moreover, being an emergency measure, the pool was limited to a period ending March 31, 1933.

We made no finding that the rates resulting from the increases proposed would be just and reasonable. No such finding was necessary. Following submission of the pooling plan and its approval by us, we said that we would grant the necessary authority under section 6 for filing blanket supplements, and that those would be permitted to take effect without suspension, upon the understanding, however, "that the resulting rates will in all respects be subject to investigation and determination as to the lawfulness of particular rates or schedules of rates, as provided by the act." The plan, in short, was regarded as something apart from our ordinary rate procedure, adapted to an emergency use for the benefit of all concerned, and to be made effective through such a spirit of cooperation as might reasonably be expected in a time of distress. It has been received in this spirit by the shippers of the country.

The carriers' plan

The carriers are averse to accepting the plan in the form in which it was proposed, and in the petition now presented ask that we approve a new and different plan, which they say will accomplish the same ends. There has as yet been no final and definite refusal to accept our plan, but it is said that the modification suggested "will relieve legal difficulties which are regarded as substantial by those responsible for the management of the carriers and will remove serious obstacles in the way of carrying the plan into successful operation."

The carriers do not in terms propose their plan as a new and different plan, but contend rather that it is consistent with one of two

possible interpretations of our suggestion. These two interpretations, according to their petition, are:

"One, that the amounts arising out of the increase in the rates scheduled, in the appendix to the report, to be increased, are, to the extent necessary to carry out the plan, to be distributed to certain of the participating carriers as gratuities, and the other, that such amounts may be treated as loans."

Neither of these interpretations is correct. It was not our thought that the distributions to be made out of the pooled funds to certain carriers were to be treated as loans, nor is there anything in
134 our discussion of the matter which is susceptible of such an interpretation. Neither did we regard these distributions as gratuities. On the contrary, our thought corresponded with that of the Supreme Court in New England Divisions case, 261 U.S. 184, 196:

"It is not true, as argued, that the order compels the strong railroads to support the weak. No part of the revenues needed by the New England lines is paid by the western carriers. *All is paid by the community* pursuant to the single rate increase ordered in *Ex parte 74*." [Emphasis supplied.]

Briefly, the new and different plan proposed by the carriers is that a corporation, to be called the Railroad Credit Corporation, shall be created under a Delaware charter for the purpose of collecting, receiving, and administering the fund derived from our proposed rate increases. All rail or water carriers, rates of which are subject to our jurisdiction, may file tariffs providing for these increases, and all carriers by railroad may by assent participate in the plan, except such as are already in default as to their fixed charges or in receivership or which derive less than 50 percent of their revenues from freight transportation. The plan is to become effective "only when those who have assented thereto all agree that a sufficient number have assented to make it practically operative". It might thus become operative without the assent of all eligible carriers, in which event those not assenting would gain full benefit from the rate increases without assumption of any obligation with respect to the weaker carriers.

The participants will be obligated to turn over to the Corporation, within specified times, the gross revenue received from the rate increases, subject to a right of refund for any tax payment because of such receipt. The Corporation, it is asserted, will use the fund to carry out our "purpose to prevent, so far as practicable, defaults by railroad companies in their fixed charges." To that alleged end it will be its duty, upon application of any participating carrier, to loan it such amount as may be necessary for this purpose. But this duty is subject to substantial qualifications.

No loan is to be made to a carrier "which is able to meet its fixed charges from its earnings, other income or other resources", or which, "with the aid of the loan from the Corporation, would still be unable to meet its fixed charges or to avoid a default", or which has not

complied with its obligations relative to payments to the fund. In determining the amount of the deficiencies in the earnings of an applicant and the necessity for making it a loan, "the amount actually expended for maintenance (but not the amount charged to operating expenses on account of depreciation and retirements) in the period from July 1, 1930, to June 30, 1931, shall be used as the maximum of its maintenance charges, unless in the discretion of the
135 Corporation a different period should in a special case be justified." Interest is to be charged "at the then current rediscount rate of the Federal Reserve bank in the New York district", such rate to be adjusted quarterly. The loan is to fall due at such time as may be agreed upon, not exceeding two years, but may be renewed for an additional period of not exceeding two years, "at the discretion of the Corporation." In making loans the Corporation "shall take as security the best available collateral, including, if required by the Corporation, the pledge of the amounts due or to become due an applicant" on distribution of the fund to the participating carriers. The Corporation is given discretion, however, "in the case of any important public interest", to relax these security requirements.

It is conceded that under the proposed provisions the Corporation will have a large element of discretion in the making of loans to participating carriers, and also in their collection and the terms and conditions attached to the loan. It is also conceded that this discretion is such that no participating carrier could compel the making of a loan by mandamus.

The Corporation is required, by the terms of the agreement, to make monthly reports to us "of its receipts, loans, and disbursements, together with a summary of its current financial conditions," and we may also require it to render other periodical reports, and have access to its books and records for inspection and audit. We shall have no statutory authority whatever over the Corporation.

In presenting our plan, we said that "appropriate provisions should be made as to the accounts of carriers reporting separately but operated as part of a system." The thought was that deficiencies in earnings should be treated from the point of view of system results, instead of dealing separately with individual carriers constituting parts of a system. In the carriers' plan, every participating carrier which makes a separate operating report to us, and which otherwise qualifies, will have the right to apply for and receive loans.

At least once in every six months, the Corporation is to review its needs for funds to carry out and accomplish its purposes, and in the event of a balance over and above requirements, "such balance shall be distributed to the participating carriers in the proportion in which their respective earnings," allowing for interest on delayed payments and tax refunds, "contributed to the fund." The obligation to pay into the fund is to continue "until such payments shall have been

made in respect to all traffic moved up to and including March 31, 1933," and the Corporation is to function thereafter for such time as may be necessary to collect all outstanding loans, make distri-
136 bution of remaining funds to the participating carriers, and wind up its affairs.

While the Corporation is to be organized "primarily" for the purpose above stated, its charter is of the Delaware type and exceedingly broad, authorizing it, for example, "to invest, trade, deal in and deal with goods, wares, and merchandise and real and personal property of every class and description." It has all the usual "holding company" powers. The stock is limited to 12 shares of the total par value of $1,200, but apparently no difficulty would be experienced in increasing, by amendment, this authorized amount. Eleven shares are to be held by the Association of Railway Executives and one share by the American Short Line Railroad Association. There are to be 12 directors—5 to be nominated by participating carriers of the eastern district, 3 by such carriers of the western district, 2 by such carriers of the southern district, 1 by the American Short Line Railroad Association, and 1 by the stockholders. In making nominations, participating carriers are to have voting power in ratio to their contributions to the fund.

Pooling in the past

Before considering the carriers' objections to our proposed pooling plan, it may be well to say something about pooling as it prevailed in the past. In the 20 or more years preceding the enactment of the act to regulate commerce in 1887, it was common practice for the carriers to pool traffic or earnings. This was a period of intense and often disastrous railroad competition. Rate wars were frequent, published rates were not observed, and flagrant discriminations prevailed. To alleviate this competition and prevent it from becoming destructive, pools were established.

Some of these were traffic pools, but others were pools of earnings. The attempt was to divide competitive traffic or the earnings therefrom in the percentages which rival routes would enjoy under assumed conditions of normal competition. In the case of a traffic pool, the endeavor was to give each route, by diversions if necessary, its agreed percentage of actual traffic. Where earnings were pooled, each road sought to handle all the traffic which it could obtain, but a large portion, usually more than half, of the revenue collected therefrom was turned over to the pool, and these pooled earnings were divided in the agreed percentages. It therefore came about that one road might eventually receive substantially more and another road substantially less revenue than it collected.

There was a doubt whether these pooling agreements could, because of considerations of public policy, be enforced in court, and
137 that doubt hampered their successful operation; but they were widely resorted to and often were effective. Section 5 of the original act to regulate commerce, however, prohibited contracts or

agreements of carriers "for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof." The decision in United States v. Trans-Missouri Freight Assn., 166 U.S. 290, made it clear that such agreements are also unlawful under the Sherman Anti-trust Act of 1890.

For some years after the approval of the act to regulate commerce in 1887 the carriers were insistent that the anti-pooling provision of section 5 was the chief error in that act, and that if pooling were permitted under public supervision the then existing evils in the railroad situation, which included financial impoverishment, would largely be eliminated. They repeatedly sought an amendment of the act to that effect, but no change was made until 1920 when, upon our recommendation, we were given authority in the transportation act, 1920, to approve pooling agreements under certain conditions, such an approval operating as a bar against all statutory prohibitions or restraints, State or Federal. Since this amendment, however, we have been asked to approve such agreements only in a very few instances of limited scope. The extent to which pooling, once predominant in railroad thought, has been forgotten in the home where it was born is indicated by the fact that in the argument on the pending petition counsel for the Association of Railway Executives stated that he was not familiar with the character of the pools which existed prior to 1887.

Legal obstacles

So much for history. The legal obstacles which are alleged to stand in the way of the acceptance of our plan are indicated in the majority report, but for convenience the statement of counsel for the executives upon this point is also reproduced here:

"Many of the directors of these railroad companies have been advised by their counsel that a vote to dispose of the earnings in question as a gratuity would, or might, render such directors personally liable to any objecting stockholder, and in fact, there is substantial reason to apprehend that an effort to do so would at once be enjoined by stockholders and the whole matter be thrown into court with a consequent delay that would in itself defeat the Commission's purpose."

None of these opinions, said to have been given by counsel, was presented for our consideration.

It is also argued that our approval of the proposed pool would not affect its legal status, inasmuch as it is not the case of
138 such a pool as is contemplated by section 5 (1) and as we have specific authority to approve. The argument, as also indicated in the majority report, is thus stated:

"That paragraph contemplates a pooling, under certain conditions, of the earnings of "competing" carriers—of carriers which, for purposes of economy, parcel out between them services which all

might perform, and justify it by pooling and dividing among them the revenues derived from all the services so parceled out. On the other hand, the pool here is to be contributed to by all the rail carriers, whether competing or not, and is clearly not a pool of the earnings only of competing carriers or of carriers bearing the same or similar relationship to the service. It not being within that section, there is not authority in law for such a pool, and the question of its legality must be determined on general legal principles."

It is further asserted that even if this were not the case, it would make no difference, because the effect of our approval is merely to prevent the pool "from being a violation of law and thus an offense against the Government," and not to "change or to modify the fiduciary relationship between the stockholders of a company and its directors."

Considering first the argument as to the application of section 5 (6), it is obvious that under any conception of competition a competitive relation exists between many of the carriers which would participate in the proposed pool, and that if such conception be enlarged, as it must necessarily be, to include the competition of carriers which serve producers or communities competing in a common market, that relation exists as to most, if not all, of the participating carriers. Of this latter form of competition, we said, in City of Spokane v. N. P. Ry. Co., 21 I.C.C. 400, 414:

"Strictly speaking, there is no such thing as market competition which is distinct from competition between the lines of transportation serving the market. A market can only compete through the agency which transports for it. The carrier makes a rate from a given market, not out of favor to that locality, but because it desires to obtain traffic which will not otherwise come to it. There would seem, therefore, to be little distinction between the competition of markets and the competition of rival railroads."

Nor should it be forgotten that the group system of rate making authorized by section 15a, under which certain carriers may receive revenue in excess of their needs, is justified in paragraph (5) of that section by the general existence of competitive conditions and the fact that it is—

"impossible (without regulation and control in the interest of the commerce of the United States considered as a whole) to establish uniform rates upon competitive traffic which will adequately sustain all the carriers which are engaged in such traffic and which are indispensable to the communities to which they render the service of transportation, without enabling some of such carriers to receive
a net railway operating income substantially and unrea-
139 sonably in excess of a fair return upon the value of their railway property held for and used in the service of transportation, * * *."

It is clear that in view of the competitive relation which exists between most, if not all, of the participating carriers, the pool which we proposed would not be lawful without our approval under section

5 (1). The carriers have themselves on two separate occasions sought and obtained our approval under that paragraph of pooling arrangements which comprehended carriers by railroad generally throughout the country, rather than groups of parallel and competing lines. Express Contract, 1920, 59 I.C.C. 518; Securities and Acquisition of Control of Ry. Exp. Agency, 150 I.C.C. 423.

Apart from the above considerations, which are sufficiently controlling, it is significant that the proviso portion of section 5 (1), which empowers us to authorize pooling under certain conditions, does not confine applications for such authority to competing railroads. On the contrary, we may act upon the application "of any carrier or carriers engaged in the transportation of passengers or property subject to this act", and all that it is necessary for us to find is that the contemplated division of traffic or earnings, to the extent which we indicate, "will be in the interest of better service to the public, or economy in operation, and will not unduly restrain competition". It is a reasonable inference that Congress, by this use of broader and more comprehensive language in the proviso than in the original prohibition, sought to eliminate technical questions of jurisdiction such as the carriers now seek to raise.

Such a pooling arrangement as was suggested in our prior report is manifestly one which we have specific authority to approve under section 5 (1).

Let us turn, then, to the question of the fiduciary relation of directors to stockholders and the danger that such a pool as we propose would be enjoined by the latter as a breach of trust. It is clear that in the old pools of earnings which existed prior to 1887 a carrier might ultimately receive either more or less revenue than it actually collected for service performed. From this it might be argued that those who receive less were extending gratuities to those who received more. The reply which counsel for the executives makes to this suggestion is that such division of earnings was based on a contract made valid by the consideration that all members of the pool received direct financial benefits from it. He asserts that in contrast all participants in our proposed pool would not receive such benefits, or at least none which constitutes in law a valuable consideration.

It is plain that in the old pools the benefits which accrued to those who contributed more revenue than they ultimately received
140 were only such benefits as might be gained from greater stability in rates and the lessening of the danger of destructive competition. Under our proposed pool the benefits would be, first, the probable receipt by all the participants of greater revenue, following the ultimate distribution of the fund, than they now enjoy, and, second, positive protection, so long as the pool continued, against a very possible series of railroad receiverships which would further disturb the financial situation, destroy returning confidence, and postpone the day when railroad traffic, earnings, and credit generally will be restored to normal status. Who will venture to say that the bene-

fits to be derived by all of the railroads, both strong and weak, from our proposed pool are not as direct and substantial as were derived by member carriers from the pools of earnings which prevailed in times gone by?

Moreover, even if there were any validity in this contention with respect to the fiduciary relation of directors to stockholders, the question may properly be asked whether it would be any more of a breach of trust to give funds to distressed carriers than to make loans of the same funds to such carriers on terms of security and interest rate which no responsible financial institution would be justified in accepting? Yet it is precisely such loans which would be available, in case of need, if the carriers' plan is to accomplish in all instances, as they contend, the same purpose of avoiding defaults in fixed charges and bankruptcies as we sought to accomplish through our plan. It must be borne in mind, in this connection, that under their plan the carriers propose to make loans only to carriers which are unable to meet their fixed charges from "earnings, other income or other resources".

There remains to be stated, however, the main and controlling reason for believing that our proposed plan would be sustained by the courts if, perchance, there should be stockholders willing in a time of general distress and need for mutual cooperation to incur the odium of seeking to enjoin it. This reason lies in the fact that the plan is in entire harmony with the concept and spirit which underlie the transportation act, 1920, as it has been interpreted by the Supreme Court. In that act, Congress for the first time dealt with the railroads, not alone as individual entities, but also as parts of a national transportation system to be adequately maintained in the interest of the whole country. It saw that these parts were interrelated, that they were mutually dependent upon each other, and that the transportation service which the country required could not be adequately maintained unless the whole of which they were parts, i.e., the national transportation system, was recognized and protected as such. As the court said in Dayton-Goose Creek Ry.
141 v. U.S., 263 U.S. 456, 478, the act "adds a new and important object to previous interstate commerce legislation". It "seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country." It was therefore held in that case, among other things, that an individual shipper, because of his interest in the adequate maintenance of "all the railroads necessary to do the business of a rate territory or section", could not complain of a general level of rates higher than would be reasonable considering the immediate service rendered to him alone.

But for present purposes the decision of the court in the New England Divisions case, supra, is of even greater significance. That case dealt with divisions of joint rates, and not with a pooling plan, but our order with respect to divisions was most strenuously resisted upon the ground that we had been moved to our action by the financial needs of the New England lines, and that such needs were wholly

irrelevant in determining the shares of the joint rates to which the participating carriers were justly entitled. The court stated this contention thus, at page 189:

"It is contended that the order is void, because its purpose was not to establish divisions just, reasonable and equitable, as between connecting carriers, but, in the public interest, to relieve the financial needs of the New England lines, so as to keep them in effective operation."

Our order could, in our judgment, have been sustained upon the ground that it was not dependent upon the financial needs of the New England lines but sufficiently supported by other facts. Significantly, however, the court saw fit to find affirmatively that we were justified in taking these financial needs into consideration. Quoting from the Dayton-Goose Creek case, supra, at page 477:

"In the New England Divisions case, 261 U.S. 184, it was held that under section 418 the Commission in making division of joint rates between groups of carriers might in the public interest consult the financial needs of a weaker group in order to maintain it in effective operation as part of an adequate transportation system, and give it a greater share of such rates if the share of the other group was adequate to avoid a confiscatory result."

The reasoning which supported this conclusion is, however, the vital thing, and we quote that reasoning from the New England Divisions case, supra, as follows, at pages 190–191:

"The credit of the carriers, as a whole, had been seriously impaired. To preserve for the nation substantially the whole transportation system was deemed important. By many railroads funds were needed, not only for improvement and expansion of facilities, but for adequate maintenance. On some, continued operation would be impossible, unless additional revenues were procured. A general rate increase alone would not meet the situation. There was a limit to what the traffic would bear. A five percent increase had been granted
142 in 1914, Five Percent case, 31 I.C.C. 351; 32 I.C.C. 325; fifteen percent in 1917, Fifteen Percent case, 45 I.C.C. 303; twenty-five percent in 1918, General Order of Director General, No. 28. Moreover, it was not clear that the people would tolerate greatly increased rates (although no higher than necessary to produce the required revenues of weak lines) if thereby prosperous competitors earned an unreasonably large return upon the value of their properties. The existence of the varying needs of the several lines and of their widely varying earning power was fully realized. It was necessary to avoid unduly burdensome rate increases and yet secure revenues adequate to satisfy the needs of the weak carriers. To accomplish this two new devices were adopted; the group system of rate making and the division of joint rates in the public interest. Through the former, weak roads were to be helped by recapture from prosperous competitors of surplus revenues. Through the latter, the weak were to be helped by preventing needed revenue from passing to

prosperous connections. Thus, by marshalling the revenues, partly through capital account, it was planned to distribute augmented earnings, largely in proportion to the carrier's needs. This, it was hoped, would enable the whole transportation system to be maintained, without raising unduly any rate on any line. The provision concerning divisions was, therefore, an integral part of the machinery for distributing the funds expected to be raised by the new rate-fixing sections. It was, indeed, indispensable."

Attention is called to the emphasis, in the passage above quoted, upon the need for "marshalling the revenues * * *, largely in proportion to the carrier's needs." This was necessary to "avoid unduly burdensome rate increases and yet secure revenues adequate to satisfy the needs of the weak carriers." It was pointed out that a "general rate increase alone would not meet the situation"; that there was a "limit to what the traffic would bear"; and that the people might not "tolerate greatly increased rates" for the mere purpose of sustaining weak lines, if the result were to increase the revenues of the prosperous carriers unduly.

It is manifest that this description fits the present situation far more closely than it did that which then existed. The need for such a distribution of earnings is far greater now than it was then. In 1920 there was little question about the ability of traffic to bear large increases in rates, although the court seems even then to have been impressed with the doubt on this point. Now we have overwhelming evidence of the inability or refusal of traffic to bear any very substantial increases. Clearly it is essential in the interests of all, including the railroads, to keep any increases down to the absolute minimum. On the other hand we have a situation where the needs of many railroads are so pressing and critical that unless they are relieved, defaults and receiverships may ensue which may spread an already impending panic like a prairie fire. Obviously the conditions described by the court in the New England Divisions case are present now in extreme form.

The point may be illuminated by further quotations from the court's decision. On page 195, it considered the contention
143 "that if the act be construed as authorizing such apportionment of a joint rate on the basis of the greater needs of particular carriers, it is unconstitutional." The argument was "that the division of a joint rate is essentially a partition of property; that the rate must be divided on the basis of the services rendered by the several carriers; that there is no difference between taking part of one's just share of a joint rate and taking from a carrier part of the cash in its treasury; and, thus, that apportionment according to needs is a taking of property without due process." "But," said the court, "the argument begs the question. What is its just share? It is the amount properly apportioned out of the joint rate." That amount "is to be fixed by the Commission; fixed at what that board finds to be just, reasonable, and equitable." And the court concluded

its discussion of this point with the following significant statement: "Whether the rate is reasonable may depend largely upon the disposition which is to be made of the revenues derived therefrom."

It is true that the court mentioned only two ways of meeting the problem of the weak lines. One was the group system of rate making and recapture, and the other was the "division of joint rates in the public interest." It did not mention a pooling plan such as was proposed in our prior report. But when the decision in the New England Divisions case was reached, the possibilities of pooling had not been developed. Moreover, the fact was not then appreciated that the division of joint rates is a most imperfect way of meeting the problem. For example, the Pocahontas lines profited more than any other from the group system of making rates in the eastern district; yet they contributed little or nothing to the New England lines through the increase in divisions. These coal roads secure a very large proportion of their ample revenues from purely local rates to tidewater and the lakes. Moreover, adjustment of divisions, due to the complexities involved and the time which must be consumed before an order can be issued, is a process not at all adapted to an emergency situation such as now exists.

It is submitted that the pooling plan which we proposed is consistent throughout with the reasoning of the court in the New England Divisions case, and at the same time adapted to the existing emergency. That case settled the proposition that the mere fact that a carrier collects certain revenue does not make it the owner, and that it may lawfully be required to turn over to another carrier a portion of that revenue which is not justified alone by the service which that other carrier performs and can be fully justified only by consideration as well of its financial needs. It is submitted, also, that if it is lawful to require a carrier to dispose in this way, through a divisional arrangement, of revenue which it has collected, it
144 is lawful to permit it to accomplish a similar result, particularly in a time of emergency, through a pooling arrangement. The justification lies fundamentally in the concept of a national transportation system, of which all the carriers are mutually dependent parts, and the need for maintaining that system adequately.

It is suggested that in the New England Divisions case the court held that divisions cannot be prescribed which will produce a "confiscatory result" for any carrier, and that our plan would accomplish such a result, in view of the fact that many of the carriers which would contribute rather than receive are not now earning a fair return. This suggestion overlooks the fact that present low earnings are due to lack of traffic rather than inadequate rates; that no carrier under our plan would receive less than it now receives; and that in all probability all the carriers would enjoy a gain in revenue. It is a singular thought to regard such a result as "confiscatory".

Summing up the situation, upon analysis the alleged legal obstacles to our plan prove to be without substance. Considered apart from

our approval under the statute, there is ample legal consideration for the proposed agreement. When, however, there is also taken into consideration our approval of the plan under specific authority of law, based on a finding that it will be in the interest of better service to the public, will not unduly restrain competition, and will afford necessary safeguards in a financial emergency affecting all of the carriers, directly or indirectly, and this approval is coupled with the fact that the plan is in entire harmony with the concept and spirit underlying the transportation act, 1920, as interpreted by the Supreme Court, it is impossible to be impressed with the fear that it would be held to violate fiduciary relationships, or that it would even be contested on that ground.

Question of expediency

There remains to be considered the plea that the plan which the carriers propose will accomplish as well as our plan the results which we contemplated, and that no reason exists, therefore, why it should be rejected in favor of a plan which it may prove impossible to carry through. This plea is without merit. The first and foremost reason is that there is no assurance whatever that it will accomplish what we intended.

It is conceded that the contemplated loans, as the agreement is drawn, will lie largely in the discretion of the corporation, a non-carrier company subject under the law to no public regulation or supervision whatsoever. It is conceded that no needy carrier
145 can compel a loan through mandamus or other legal process, and that the discretion with respect to the qualifications of the applicant for a loan and the security which it will be called upon to furnish is such that the exercise of this discretion one way or the other could not be called in question.

And even if the loans are made, the resulting situation will be quite different from what would result under our plan. Under the latter the obligations of the needy carrier would be reduced. Its fixed charges would be met without use of its credit or collateral or the assumption of any additional interest payments. Under the carriers' plan there will be no reduction of obligations; on the contrary, they will be increased. Fixed charges may be met, but only by the assumption of a new and different indebtedness accompanied by depletion of collateral and ensuing interest payments. The carrier may be tided over an immediate danger of default, but only at the expense of a further attenuation of its credit and a mounting indebtedness. The time when, if ever, it can regain its financial health will be postponed materially beyond the time which would be possible under our plan. It is not difficult, however, to understand why the weaker lines should hesitate to antagonize the stronger lines and the railroad financial fraternity by supporting our plan at this time.

In addition, the introduction into the situation of this unregulated private Delaware corporation with its vast potential powers is some-

thing which it is difficult to view without foreboding and apprehension. The possibilities of discrimination in the treatment of needy carriers for ends which may appeal to the dominating carriers as desirable are sufficiently evident. Other possibilities, extending beyond any present anticipation, are manifold and inherent in the plan. It is impossible to approve such a plan as in the public interest, even if there were any assurance that it will accomplish the immediate ends which we have in mind, an assurance which is utterly lacking.

It is clear from the report of the majority that they realize the imperfections of the loaning plan and its inferiority to our pooling plan from the point of view of practical accomplishments. They are careful to disclaim either approval or disapproval of the loaning plan or of "the agency the carriers say they expect and intend to use in making that plan effective." The final result is that the proposed rate increases are approved unconditionally, coupled with an expression of expectation or hope that the funds derived therefrom will be used "in aid of financially weak railroads."

The motive behind this action is evidently fear that if the Commission should adhere to the pooling plan, that plan might be
146 rejected and the Commission thereupon be held responsible for financial difficulties which might then ensue. It is submitted that there is no solid ground for such fear. The carriers have been very careful to refrain from any final rejection of our plan; they have contented themselves with a presentation of the legal obstacles said to stand in the way of its acceptance. In view of the above discussion of these alleged obstacles, it may be asserted with confidence that under all of the circumstances there would be no final rejection in the conditions which now exist. But even if this were not so it is submitted that the sole responsibility of this Commission is to propose a lawful and reasonable plan which will meet the situation effectively. If the carriers should be unwilling to accept such a plan in the spirit of cooperation in a time of national distress which the shippers have already manifested, that would be their responsibility, not ours.

Apart from the fact that a sound plan is being exchanged for an inferior substitute, it is a matter of great regret that the carriers have shown an inability to grasp the idea which the Supreme Court has recognized and voiced with such clarity and strength, namely, that the railroads are interrelated and mutually dependent parts of a national transportation system. There has never been a time when a spirit of mutual cooperation and solidarity were more essential to the welfare of the industry. The time has surely come for the railroads, as it came for the sovereign States, "to form a more perfect Union" which will "insure domestic Tranquility, provide for the common defence, promote the general Welfare." If our plan had been accepted in the spirit in which it was suggested and put promptly into effect, certain recent and unfortunate developments in the railroad financial situation might have been averted.

I am authorized to say that Commissioners McManamy, Porter, and Mahaffie join in this expression of dissent.

APPENDIX

Plan for increasing freight rates

In the tables which follow the numbered generic descriptions of commodities or commodity groups are those specified in the order of the Commission, Division 4, of November 22, 1927, In the Matter of Freight Commodity Statistics. Except as otherwise provided and except where prefixed by circled "1", they cover the specific items customarily included by the carriers in their reports to the Commission under each numbered description. Where prefixed by circled "1", the designated descriptions apply only on the commodities specifically here named.

147 List A

On commodities, in carloads, except as otherwise noted, included under the following descriptions there shall be no increase:

No.	Description
10	Wheat
20	Corn
30	Oats
40	Barley and rye
41	Rice
42	Grain, n.o.s.
50	Flour, wheat
51	Meal, corn
52	Flour and meal, edible, n.o.s., except cassava flour, sago flour, and tapioca flour
61	Mill products, n.o.s., except alfalfa meal
70	Hay and alfalfa
71	Straw
90	Cotton in bales, any quantity
91	Cotton linters, noils, and regins
100	Cottonseed
120	Apples, fresh
122	Berries, fresh
124	Grapes, fresh
125	Peaches, fresh
127	Fruits, fresh, domestic, n.o.s.
130	Potatoes, other than sweet
150	Beans and peas, dried
162	Flaxseed
163	Sugar beets
164	①Products of agriculture, n.o.s., as follows: Corn cobs; corn-cob meal; corn husks or shucks; corn stalks; flaxseed hulls
170	Horses, mules, ponies, and asses
180	Cattle and calves, single deck
181	Calves, double deck
190	Sheep and goats, single deck
191	Sheep and goats, double deck
200	Hogs, single deck
201	Hogs, double deck
400	Logs
402	Wood (fuel)
410	Ties, railroad
443	①Excelsior (wood), wood shavings, n.o.i.b.n., and sawdust
701	①Cotton waste, other than manufactured packing or wiping waste

List B

On commodities, in carloads, included under the following numbered descriptions there may be an increase of 6 cents per ton of 2,000 pounds:

No.	Description
290	Anthracite coal
300	Bituminous coal
310	Coke
320	Iron ore
330	Copper ore and concentrates
331	Lead ore and concentrates
332	Zinc ore and concentrates
333	Ores and concentrates, n.o.s.
350	Gravel and sand (other than glass or molding)
351	Stone, broken, ground, or crushed; coated sand; and coated rock road-building material
392	①Products of mines, n.o.s., as follows:
	Borate rock
	Bituminous rock
	Bituminous asphalt rock
	Iron pyrites
	Limestone, crushed or ground
	Dolomite
	Earth or soil, n.o.i.b.n.
	Feldspar
	Fluorspar
	Fluxing stone
	Ganister rock
	Glass sand
	Crude gypsum
	Loam
	Molding sand
	Nickel matte
	Ore residue
	Slate, crushed, ground, or scrap
	Volcanic ash
420	Pulpwood
491	①Mill cinder and mill scale, iron or steel
692	Furnace slag
701	①Pyrites cinder, refuse, or dross
701	①Coal ashes and cinders
701	①Brickbats and brick dust

List C

On commodities, in carloads, included under the following numbered descriptions there may be an increase of 12 cents per ton of 2,000 pounds:

No.	Description
352	Stone, rough, n.o.s.
390	Phosphate rock, crude (ground or not ground)
391	Sulphur (brimstone)
392	①Products of mines, n.o.s. as follows:
	Bentonite
	China clay
	Ground flint
	Fire clay
	Gilsonite
	Ground gypsum, not calcined
	Kaolin
	Barium sulphate, ground (barytes), not precipitated
	Barium sulphate, ground (barytes), precipitated (blanc fixe)

List C—Continued

No.	Description
392	①Products of mines, n.o.s., as follows—Continued
	Magnesium sulphate, crude, or kieserite
	Mica scrap or screenings
	Pipe clay
	Shale
	Slate, not crushed, ground or scrap
	Soapstone (talc) ground, dust, lump or rough slabs
	Chalk, crude
	Clay, n.o.i.b.n.
	Cobblestones
	Flint pebbles
	Marble chips
401	Posts, poles, and piling
430	Lumber (made of domestic or Canadian wood or Mexican pine only)
430	Lath and shingles
431	Box, crate, and cooperage materials
432	Veneer and built-up wood, made wholly of domestic or Canadian wood or Mexican pine
443	①Products of forests, n.o.s., as follows:
	Acid wood
	Barks—
	Black oak (stick)
	Cedar, shredded
	Hickory, not ground or powdered
	Redwood, shredded
	Tanbark—Leaf (stick); Ground, spent or not spent
	Wood-charcoal briquettes
	Brush, riprapping
	Charcoal, wood
	Chemical wood
	Chips (shavings), brewers' or vinegar
	Cigar-box wood
	Cones, fir or pine
	Cork dust (cork-bark refuse)
	Cork chips, shavings, virgin bark, waste, or refuge
	Palm kernels
	Pine needles
	Shingle tow or shavings
490	Pig iron
693	Scrap iron and scrap steel

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List D

On commodities, in carloads, except as otherwise noted, included under the following numbered and unnumbered descriptions there may be an increase of 1 cent per 100 pounds:

No.	Description
80	Tobacco leaf, unmanufactured, any quantity
101	Cottonseed meal and cake
110	Oranges and grapefruit
111	Lemons, limes, and citrus fruits, n.o.s.
123	Cantaloups and melons, n.o.s.
126	Watermelons
140	Cabbage
141	Onions
142	Tomatoes
143	Vegetables, fresh, n.o.s.
151	Fruits, dried or evaporated
152	Vegetables, dried, n.o.s.
160	Vegetable-oil cake and meal, except cottonseed
161	①Peanuts, raw
164	①Products of agriculture, n.o.s., as follows:
	Alfalfa seed
	Apple waste
	Apricot kernels
	Bagasse
	Barley or grain skimmings, malthouse
	Barley sprouts
	Bean meal (ground beans), n.o.i.b.n.
	Beans, soya
	Beet pulp or residue
	Broomcorn
	Cane seed
	Chufas

List D—Continued.

No.		Description
164	①	Products of agriculture, n.o.s., as follows—Continued
		Clover seed
		Cocoa-bean refuse (cocoa dust)
		Copra
		Cowpeas
		Cucumbers in tank cars
		Fenugreek seed or meal
		Fodder, n.o.i.b.n.
		Fruit pits or stones, n.o.i.b.n.
		Fruit peel, not candied or crystallized
		Fruit pulp
		Grains, spent, dry or wet
		Grass seed
		Hemp stalks
		Kapok seed or kapok-seed meal
		Malt, malted grain, or malt sprouts
		Meal, alfalfa, clover, peanut vine, or sorghum; or chopped alfalfa
		Millet seed
		Mustard seed
		Pea meal
		Peanut grits
		Peanut hulls or chaff
		Pomace, n.o.i.b.n.
		Rape seed or rape-seed meal
		Sorghum seed or meal
		Tobacco stems, ground or unground
		Tomato refuse (from canneries)
		Unmanufactured tobacco cuttings, siftings, scraps, or sweepings
		Velvet beans or velvet-bean meal
353		Stone, finished, n.o.s.
360		Petroleum, crude
370		Asphalt (natural, byproduct, or petroleum)
440		Rosin
441		Turpentine
443	①	Pine tar
450		Petroleum oils, refined, and all other gasolines
451		Fuel, road, and petroleum residual oils, n.o.s.
452		Lubricating oils and greases
453		Petroleum products, n.o.s.
540		Cement, natural or Portland (building)
550		Brick, common
551		Brick, n.o.s., and building tile
552		Artificial stone, n.o.s.
560		Lime, common (quick or slacked)
630		Ice
640		Fertilizers, n.o.s.
697		Building woodwork (millwork)
701	①	Soapstone forms or slabs, including fire box or furnace linings
701	①	Tar and pitch, except brewers' and montan
701	①	Feed, animal or poultry, n.o.i.b.n., and not including biscuits, dog (dog cakes)

150 On all other commodities, including all less-than-carload freight, there may be an increase of 2 cents per 100 pounds.

The increases set forth above are subject to the following provisos:

1. In no event shall the increase levied on any shipment be in excess of 10 percent of the charges which would be assessed in the absence of the increase.

2. Where rates are stated in schedules in dollars per car the respective increases shall be $7.50 per car if the increase, as shown above, is 1 cent per 100 pounds; $10 per car if such increase is 2 cents per 100 pounds; $3 per car if such increase is 6 cents per ton; and $5 per car if such increase is 12 cents per ton.

3. Shipments of petroleum products and furniture, moving under rates the same as or less than those prescribed or approved in no. 17000, parts 4, 4–A, and 5, shall not be subject to any surcharge

under these findings, on and after the dates when the rates covered by said findings become effective. When shipments of such commodities move under combination rates all factors of which are not filed in compliance with the decisions in No. 17000, the above authorized increases will apply to the through movement.

4. Where through shipments move under combination rates subject to the interstate commerce act, but one increase may be applied on such shipments. This proviso does not apply where there are two movements subject to the act separated by an intermediate movement not subject to the act. Where shipments move under transit on a basis which applies a through rate (either with or without a transit or out-of-line charge) the increase or surcharge should be applied but once.

Where the minimum weights are different in connection with the separate factors in combination through rates, the increase shall be based on the highest minimum, unless a lower total results from applying the above authorized increases separately to each factor or any aggregation of factors; subject to the minimums attaching thereto.

Weights.—The increases authorized shall apply to the weight on which the charges are based.

Mixed carloads.—Mixed carload shipments shall be subject to the highest surcharge provided for any article in the carload, except where a lower total results by surcharging a portion of the shipment as less than a carload and the remainder as a carload.

Switching, floatage, and lighterage charges.—All switching, floatage, and lighterage charges collected from shippers or receivers may be increased 10 percent, subject to the following exceptions: (*a*) In the case of switching charges in the Chicago switching district (Illinois-Indiana) such charges, on and after the date when the rates covered by the order in no. 19610 become effective, shall not exceed the maxima therein prescribed; and (*b*) no increase shall apply on articles in list A.

Joint rates to and from foreign countries.—It is not intended to increase the proportions of joint through rates to or from points in foreign countries accruing for the transportation in such foreign countries; the proportions of such rates accruing within the United States may be increased to the extent herein approved for domestic rates.

Carriers by water.—Where rates of water carriers are subject to the act, covering transportation either wholly by water or partly by water and partly by railroad, the increases herein suggested may in like manner be applied to such rates.

151 Fourth-section departures.—If the adoption of the different rates of increase herein suggested results in any violation of the aggregate-of-intermediates or long-and-short-haul provision of section 4 (1) of the act, the carriers should take prompt steps to remove the violation or promptly make applications for relief.

Rates prescribed and not yet effective.—It is contemplated that the increases herein set forth will be superimposed upon the rates now in effect, whether established by order of the Commission or the voluntary act of the carriers (including rates held in effect by reason of investigation and suspension orders), and also upon rates prescribed by outstanding orders of the Commission not yet in effect, when and as the rates therein prescribed become effective, subject to the exceptions noted above.

By the Commission.

[SEAL] GEORGE B. MCGINTY,
Secretary.

152 (Copy)

Exhibit D attached to bill of complaint, being report of Louisiana State Commissio., and its orders 897 and 901

1 Louisiana Public Service Commission, Order No. 897

Texas-Louisiana Tariff Bureau:	
Ex parte ---------- No. 1703	
In re: General increase in freight rates and charges. I.C.C. Docket Ex Parte 103.	Consolidated
Southern Freight Association:	
Ex parte ---------- No. 1690	
In re: General increase in freight rates and charges. I.C.C. Docket Ex Parte 103.	

OPINION BY FRANCIS WILLIAMS, CHAIRMAN

This is an application to grant the same emergency rate increases in Louisiana already allowed by the Interstate Commerce Commission to all of the railroads of the United States effective January 4, 1932, in the proceedings filed before that Commission by the rail carriers known as Fifteen Percent case, 1931, Ex Parte No. 103, In the Matter of Increase in Freight Rates and Charges.

The order and opinion of the Interstate Commerce Commission in Ex parte 103 excluded almost all agricultural commodities and many of the basic commodities used in agricultural operations. Those commodities which the farmers of the country consume which were not exempt from the authorized increases were given special treatment by the Interstate Commerce Commission, and the rate increases on such specially treated commodities were held to a minimum.

Some of the most important agricultural commodities produced in Louisiana are not in the exempt list as to interstate traffic. Because we were and are without the necessary funds, the Louisiana Public Service Commission was not represented at the hearings before the Interstate Commerce Commission held in Washington and elsewhere,

and the Louisiana agricultural interests therefore did not receive the same favorable consideration extended to the major farm products of the other States represented at these I.C.C. hearings.

153 The order of the Interstate Commerce Commission did not set forth in any detail any reasons found in the testimony by which the exclusion of certain commodities and the inclusion of other commodities in the rate increases could be justified, practically the only evidence before that Commission being statements as to the financial condition of the rail carriers of the country, showing a general, and in some instances startling, decline in revenues.

The application of the Louisiana carriers was heard at New Orleans on January 26th, 1932. It was admitted by all persons present at the hearing that the rail lines were in need of emergency rate-increase relief, and we are of the opinion that it will be beneficial to the public generally for some measure of relief to be granted the rail lines as to their Louisiana rates.

Practically every State in the United States has granted or will grant such emergency revenue assistance to the railroads. Among the anticipated favorable results of such revenue increase will be not only a stopping of the further discharge of railroad employees in Louisiana and throughout the United States, but, according to the uncontroverted statements made by the carrier representatives, the increase in revenues expected as a result of these proceedings will permit the railroads to reemploy many of their former employees whose services the carriers have been compelled to dispense with because of the financial difficulties faced by them during this period of unprecedented depression.

This Commission does not feel, however, that the principal industries of this State should be expected to contribute increased freight rates to the financially crippled carriers on every commodity they use and produce. We believe that the burden of cooperating towards the financial rehabilitation of the railroads should be as evenly distributed as possible and that the share which the Louisiana industries should be called upon to bear should be equal and uniform among those able to help.

A study of the rail movement in Louisiana products in interstate commerce was made by this Commission, and it was ascertained that most of the commodities produced in Louisiana in great volume were already contributing towards the relief of the railroads by paying the interstate increaser emergency rates allowed by the Interstate Commerce Commission in Ex parte 103 on January 4, 1932.

So, in determining whether or not this Commission should grant increases applied for on Louisiana State traffic, consideration was given by this Commission to such interstate traffic contributions already being made on such commodities, which move so much more extensively in interstate than in intrastate commerce.

154 Every industry in Louisiana, affected by the advances authorized by the Interstate Commerce Commission was notified of the hearing in New Orleans on January 26th, 1932, and no pro-

tests were filed to the emergency relief rate increase application except as to the following commodities: Salt cake (crude sulphate of soda); fresh vegetables; sweetpotatoes; cottonseed meal, cake, bran, hulls, meats; fresh tomatoes; pulpwood; bagasse; stave bolts; sugarcane; raw and refined sugar; syrup and molasses, blackstrap molasses; fresh cabbage; fresh or dried onions; pulverized limestone; waste wood (stumps and refuse woods); second-hand sugar bags; waste paper; velvet beans; soya beans; Austrian winter peas; cow peas; rosin sizing; potash nitrate (nitrate of soda potash); sand; gravel; shells; crushed stone, etc.

It is not urged by the carriers that the proposed increases represent reasonable rate adjustments in and of themselves, nor have they been so regarded by the Interstate Commerce Commission or other State regulatory bodies who have authorized the emergency advances either in whole or in part. It is conceded by all concerned that the application is purely and simply one for emergency relief in order that the physical properties of the carriers and their credit may be maintained at something slightly above the "breaking down" point during the present crisis.

We believe and hope that the advances authorized by the Interstate Commerce Commission on interstate traffic and by the State commissions, including Louisiana, and further the ten percent wage reductions accepted by the railway employees, will tide the railroads through their present stress and make it possible to return to the normal basis of freight rates at an early date.

As to sand, gravel, shells, crushed stone, etc.—These products are most extensively used for highway and street construction and maintenance purposes. On traffic within Louisiana west of the Mississippi River these commodities, under a decision of the United States Supreme Court have recently taken material rate advances, in some cases more than fifty percent in excess of the prior good road rates, and as to the traffic east of the river it is conceded by the Louisiana Highway Commission and other users, and shippers, that substantial increases in these rates are inevitable within the near future. We are of the opinion that these commodities are bearing and will bear their full proportion of the transportation burden and no increases should here be allowed.

As to Salt cake (crude sulphate of soda).—This commodity is produced in connection with certain salt-mining operations in Louisiana. It is used largely in the manufacture of Kraft paper and is subject to severe foreign and domestic competition. Salt produced by the same interests and the other commodities used in producing salt cake are already paying the prescribed increases, and we are of the opinion that the record warrants no emergency surcharge on salt cake also.

155 As to fertilizer and fertilizer materials.—Transportation charge on these commodities reflect themselves directly in agricultural activities and, considering that many of the ingredients entering into the manufacture of fertilizer are al[illegible]dy bearing the

prescribed increases, and, further, appreciating the extreme distress in agriculture generally, we have concluded that fertilizer and fertilizer materials should be exempted.

As to cottonseed cake, meal, bran, hulls and meats.—These products bear the same relationship to cottonseed as do the residual products of rice milling operations to rice and as do the residual products of wheat, corn, and other grain and by-products thereof produced in other sections of the United States and which have been exempted by the Interstate Commerce Commission in Ex parte 103.

Since no increase is provided for on these other agricultural products and by-products we do not believe it proper to treat the cottonseed industry of Louisiana any differently from the manner in which the Interstate Commerce Commission has treated those interests engaged in agricultural and quasi-agricultural operations just noted.

Further, it must be remembered that most of these Louisiana cottonseed products move in interstate commerce, and, therefore, the Louisiana cottonseed industry will contribute a very considerable sum of money and its fair share to the relief of the railroads in such increased interstate freight charges.

As to bagasse.—This commodity is a by-product of the manufacture of raw sugar at Louisiana sugar mills. It is the fibrous residue of crushed sugarcane. It is shown by the testimony that in the purchase of cane from the producers the sugar mills take into account the revenues they will receive from the sale of bagasse and that the purchase price paid for the cane reflects the bagasse revenue.

The condition of the sugar and related industries in the State is so precarious that every effort must be made by those in position to do so to aid it. There is but one purchaser of bagasse in the State and it is shown that the manufacturing operations of this company for the past year or more have been conducted at a substantial loss. This manufacturer is already paying its fair share of emergency increases on all of its outbound tonnage or manufactured products, in itself a substantial amount, and on all of its other raw materials, and we do not think the showing would justify our making them pay the emergency increase on bagasse too. Bagasse, therefore, will be exempted.

As to pulpwood.—This commodity moves to paper mills within the State manufacturing Kraft paper. The industry is comparatively new in Louisiana and these mills afford a continuous market for woods which would not only otherwise be waste materials, but would, in many instances, be a direct burden on the farmer in clearing his lands.

156 It is shown that the harvesting and marketing of these woods at the paper mills has provided many small farmers in those areas of the State where the mills are located with cash resources at times when they were either wholly unable to sell their normal farm products at any figure or were selling them below the cost of production. It is not clear to us why surcharges should have

been authorized on these woods when logs as such (and these woods appear to be nothing but low grade logs unfit for other uses) and many higher priced related forest products have been relieved from the emergency increases.

It appears that the movement of this commodity is almost wholly intrastate, and it has been exempted from the surcharges in other States producing the same quality of paper as is produced in Louisiana. It is obvious that to authorize the increase here would put the Louisiana kraft paper industry at a disadvantage with competitors in other States. Additionally, wood pulp manufactured from Louisiana pulpwood is in keen competition with foreign wood pulp. As most of the Louisiana paper will pay increased interstate rates and for the other reasons set forth, we are of the opinion the increases should not apply on pulpwood.

As to stave bolts.—Stave bolts are described as split logs. They are produced in rough form in the forest, shipped to mills where they are made into staves which are shipped interstate on the increased rates of January 4th, 1932, and which will also pay the intrastate advances on staves herein allowed.

It is our opinion that as the outbound finished product will pay the prescribed increase, the raw material, stave bolts, should be excluded.

As to sugarcane.—The sugarcane industry in Louisiana is in a serious situation, due to disturbed conditions of the sugar markets throughout the world and other misfortunes unhappily incident to all agricultural pursuits. The products of sugarcane are in direct competition with the products of sugar beets, which were excluded from the emergency increases granted by the Interstate Commerce Commission effective January 5th, 1932. Under these circumstances we believe that sugarcane should, like sugar beets, be exempted from the surcharge applied for here.

As to sugars, raw and refined, sirup, molasses, and blackstrap molasses.—These commodities are all closely related one to the other and they are experiencing severe price depression, perhaps beyond that of most of the general run of commodities, and in our opinion an increase in freight charges on these products is unwarranted. Besides, most of the Louisiana sugar moves in interstate commerce and will therefore bear the increased I.C.C. rates.

157 As to sweetpotatoes.—Potatoes, other than sweet, are exempt from any surcharge in interstate commerce. No sound reason exists, in our opinion, for imposing an increase on sweetpotatoes and not on other potatoes, in any increase on either be justified. Sweetpotatoes will therefore be exempted.

As to cabbage, onions, tomatoes, and fresh vegetables.—These are agricultural commodities produced in substantial volume in Louisiana. It is a matter of common knowledge that the selling prices of these commodities are severely depressed. The same reasoning which impelled the Interstate Commerce Commission to withhold advances on fresh fruits and other specified vegetables moving inter-

state applies with equal force to these commodities, and we decline to authorize any advances thereon.

As to limestone, pulverized.—This commodity is used almost exclusively as a soil sweetener, and for all practical purposes it is a fertilizer material, and no increase thereon will be authorized.

As to waste wood.—As is the case with pulpwood, waste wood is practically a refuse material and is of extremely low value. The testimony is that it consists largely of stumps taken from cut-over lands as a pact of the process of clearing such lands. It is stated by a witness for the industry consuming this product that in many instances land is cleared without cost to the owners in return for the stumps, from which turpentine and other naval stores are extricated. We are convinced from the record that this product is not able to assume any further transportation burdens if the plants consuming it are to remain in operation. Accordingly, no surcharge will be authorized thereon.

As to bags, second-hand, sugar.—This is a low grade commodity moving from sugar refineries usually to New Orleans, where they are classified, remanufactured or mended. A very large proportion of them are in such condition that they are only fit for further use as cotton bale covering. We believe from the testimony offered that any increase theron would either practically stop the movement due to their extremely low value or result in such tonnage as there is moving by other means. Under the circumstances we shall not authorize the surcharge.

As to waste paper.—Waste paper, as its name indicates, consists of discarded paper boxes, cartons and other like refuse. It is gathered, assorted, and shipped to paper mills for remanufacture. It is competitive with other materials entering into the manufacture of kraft and similar papers. Having excluded pulpwood from the proposed surcharge, and further, because it is shown that the value of waste paper is so low that it is not able to stand any advance, we conclude that this product should also be exempt.

158 As to soya beans, velvet beans, Austrian winter peas, and cow peas.—These products, so far as their major use in Louisiana is concerned, are practically fertilizer materials in that they are used as soil conditioners. The reasons we have ascribed for excluding fertilizer and fertilizer materials proper from the proposed advances apply equally to these commodities. No increases thereon will be authorized.

As to rosin sizing.—This commodity is used in connection with the manufacture of kraft paper. Many of the other commodities entering into this paper manufacture are taking the prescribed increases, as is the outbound finished product of the paper mills. The testimony of record convinces us that we are warranted in excluding rosin sizing from the surcharge, and it will be so excluded.

As to potash nitrate (nitrate of soda potash).—This is a fertilizer material, and we shall deny any surcharge thereon, as we have done with respect to fertilizer materials generally.

As to less-than-carload rates.—We are of the firm opinion that any increase in existing less-than-carload rates would have a most adverse effect on the revenue of the carriers. Even with normal rates experience has shown a heavey drift of this tonnage to other transportation agencies, and to further advance these rates would, in our judgment, only aggravate the situation and bring about still further diversion of this traffic from the rail lines, and as the purpose of this surcharge is to increase revenues no increases will be authorized on less-than-carload traffic whatsoever.

The premises considered, it is

Ordered, That the common carriers by railroad operating within the State of Louisiana be, and are hereby, authorized to issue, file, and make effective on March 1, 1932, on Louisiana intrastate traffic, the tariff of emergency charges issued December 26, 1931, effective on interstate traffic January 4th, 1932, Agents E. B. Boyd, I.C.C. A-2245; L. D. Chaffee's I.C.C. A-262; W. S. Curlett's I.C.C. A-356; C. W. Calligan's I.C.C. 224; J. E. Johanson's I.C.C. 2360; B. T. Jones I.C.C. 2493; F. L. Speiden's I.C.C. 1600; H. G. Toll's I.C.C. 1282; F. Van Ummersen's I.C.C. 155; except that the said tariff is hereby rejected as to the items and commodities enumerated below and no increases rates or charges shall be published, charged, or collected on the following commodities:

Salt cake (crude sulphate of soda), group 640; fertilizer or fertilizer materials, group 640; vegetables, fresh, group 143; potatoes, sweet, group 152; cottonseed meal, cake, bran, hulls, meats, group 101; bagasse, group 163; tomatoes, fresh, group 142; pulpwood, 159 group 420; bolts, stave, group 430; sugarcake; sugar, raw and refined; syrup and molasses, molasses blackstrap; cabbage, fresh, group 140; onions, fresh or dried, group 141; limestone, pulverized, group 392; wood, waste (stumps and refuse woods); group 430; bags, second-hand, sugar; paper, waste; beans, velvet; beans, soya beans; peas, Austrian winter; peas, cow, group 164; sizing, rosin; nitrate potash (nitrate of soda potash); sand (except asbestos sand and silica sand); gravel, group 350; crushed stone (broken stone ranging in size to 200 pounds weight), including ground limestone, in bulk or in bags, group 392; but not including gypsum rock, riprap (irregular shaped rock) in pieces ranging up to 200 pounds weight, group 351; clay, fire (except ground clay in bags, and treated or milled clay); clay, N.O.I.B.N. in current Western Classification (except ground clap in bags); building, paving or roadmaking and roofing materials as follows: Common shells, whole or crushed, group 640; crushed tile and crushed sewer pipe (imperfect hollow tile and sewer pipe crushed for use instead of crushed stone); soil; cinders; crushed brick or brickbats; chat (mine gravel), whole or crushed; slag (not pulverized); chatts; asphalt-coated stone or rock (Amiesite) broken ground or crushed; furnace slag, charcoal, carloads, and heading bolts, carloads.

171926—33——10

It is further ordered, That where through shipments move under combination rates but one increase shall be applied on such shipments.

It is further ordered, That no emergency charges whatsoever shall be applied to less-than-carload shipments.

It is further ordered, That the emergency rate increases herein authorized shall expire on March 1, 1933, unless by subsequent order of this Commission the said expiration date is changed or modified; and it is further

Ordered, That the Louisiana Public Service Commission shall retain jurisdiction of this proceeding, reserving the right to cancel, amend, or modify this order either upon complaint of any party at interest or upon its own motion at any time. Effective March 1st, 1932.

(Signed) FRANCIS WILLIAMS,
Chairman.
" DUDLEY J. LEBLANC,
Commissioner.
" H. G. FIELDS,
Commissioner.

By order of the Commission.
Baton Rouge, Louisiana, February 8th, 1932.
(Seal)
Sgd. HENRY JASTREMSKI, *Secretary.*
Attest: A true copy.
Sgd. HENRY JASTREMSKI, *Secretary.*

160 Louisiana Public Service Commission

Order no. 901

(Amending order no. 897)

Texas-Louisiana Tariff Bureau:
Ex parte ---------- No. 1703
In re: General increases in freight rates and charges. (I.C.C. Docket Ex parte 103.)
Southern Freight Association:
Ex parte ---------- No. 1690
In re: General increases in freight rates and charges. (I.C.C. Docket Ex parte 103.)
} Consolidated

Having under further consideration the record in this matter, and for good cause, it is

Ordered, That this Commission's order no. 897, of date February 8, 1922, be, and the same is hereby, amended and modified so as to exclude charcoal, carloads, and heading bolts, carloads, from

the emergency rate increases authorized in said order, and that in all other respects the said order no. 897 remain in full force and effect.

(Sgd.) FRANCIS WILLIAMS,
Chairman.
(Sgd.) DUDLEY J. LEBLANC,
Commissioner.
(Sgd.) H. G. FIELDS,
Commissioner.

By order of the Commission.
Baton Rouge, Louisiana, March 3rd, 1932.
(Seal)
Sgd. HENRY JASTREMSKI, *Secretary.*
Attest: A true copy.
Sgd. HENRY JASTREMSKI, *Secretary.*

161 In United States District Court

In Equity, No. 96

STATE OF LOUISIANA ET AL., PLAINTIFFS
vs.
UNITED STATES OF AMERICA ET AL., DEFENDANTS

Answer of United States of America

Filed Nov. 28, 1932

United States of America, one of the defendants in the above-entitled case, for answer to the petition filed therein against it, answers and says:

I

United States admits for the purposes of this suit that the allegations contained in the opening paragraph and paragraphs I, II, III, IV, V, and VI of the petition are true, with these exceptions: It denies the allegations in said paragraph II that this cause arises "under the Constitution" of the United States and avers that the Court's jurisdiction to entertain this suit is specifically provided for in urgent deficiencies act, 38 Stat. 219 (U.S.C. Tit. 28, § 41 (28); §§ 43 to 47, inclusive); it denies the allegations in said paragraph III that the order issued by the Interstate Commerce Commission on November 7, 1932, in its docket no. 25135, "is ultra vires, null, and void", and avers that said order is proper and lawful in all respects.

II

United States admits that the allegations contained in paragraph VII of the petition are true in substance so far as they go, but respectfully refers the Court to the full text of the Commission's said report in Fifteen Percent case, 1931 (exhibit C to the petition), for full and complete information concerning the contents thereof and the statements therein made by the said Commission.

III

United States admits the allegations contained in paragraphs VIII, IX, and X of the petition are true.

IV

Answering paragraph XI of the petition, United States admits that, following the refusal of the Louisiana Commission to allow the surcharges on the selected list of commodities, the carriers filed
162 their petition with the Interstate Commerce Commission for an investigation and order under § 13 of the Interstate Commerce Act, that said Commission instituted and conducted such investigation, held hearings, and heard evidence of all interested parties as alleged in the petition, including plaintiffs herein, and thereafter issued its report therein on September 29, 1932, and said order on November 7, 1932; but United States denies all the other allegations of said paragraph XI and denies that the Commission's said order of November 7, 1932, is illegal, null, or void because of the things alleged in said paragraph XI or any of them.

Further answering the separate subdivisions of said paragraph XI, United States says:

1. United States admits the allegation in subdivision 1 of said paragraph XI that the so-called Fifteen Percent case, 1931, was a general revenue case, and that therein the Commission did not undertake to determine the reasonableness or lawfulness otherwise of any particular rates.

2. United States admits the allegation in subdivision 2 of said paragraph XI that said Commission did not in its docket no. 25135, Increases in Intrastate Freight Rates, find that interstate rates as increased by the surcharges on articles on which the Louisiana Commission refused to allow similar surcharges on intrastate rates within Louisiana were just and reasonable; but United States denies that such finding is a necessary predicate for its said order of November 7, 1932, which the petition attacks.

3. United States, for answer to subdivision 3 of said paragraph XI, admits that said Commission did not allow a general increase in all interstate rates, but selected a list of commodities which it exempted from the interstate surcharges without finding that the particular rates so increased were just and reasonable, but United States

denies that such finding was necessary to the exercise of the authority reposed in the Commission by the Interstate Commerce Act and the issuance of its order therein of November 7, 1932.

4. United States denies the allegations of subdivision 4 of said paragraph XI.

163 5. United States admits the allegation in subdivision 5 of said paragraph XI that the permission granted by the Commission in the Fifteen Percent case, 1931, to increase interstate rates expires March 31, 1933, but denies the further allegations in said subdivision 5 that the Commission made no finding as to what increased revenue would be received by the carriers operating within Louisiana if the surcharges were applied to intrastate shipments of the articles exempted by the Louisiana Commission from said surcharges.

6. United States admits the allegation in subdivision 6 of said paragraph XI that the mere authorization by the Commission of a horizontal advance in interstate rates is not a determination that the resulting rates are just and reasonable, but denies that the Commission is without authority in the absence of such finding with respect to interstate rates to require the carriers to add the surcharge to their intrastate rates.

7. United States admits that in the Fifteen Percent case the Commission did not allow an increase in freight rates on all commodities, but selected certain commodities to which the increases applied; but for full and complete information concerning what the Commission permitted and authorized in said case, United States respectfully refers the Court to the Commission's report therein (exhibits B and C to the petition).

8. Answering subdivision 8 of said paragraph XI, United States disclaims any knowledge of the alleged investigation by the Louisiana Commission or the record before it in the proceedings described in said subdivision 8; but United States denies that anything done by said Louisiana Commission could result in preventing the lawful order of said Interstate Commerce Commission of November 7, 1932, from going into effect.

9. Answering subdivision 9 of said paragraph XI, United States admits that the Interstate Commerce Commission did not issue an order in the Fifteen Percent case, 1931, and denies the remaining allegations of said subdivision.

10. United States admits the allegations contained in subdivision 10 of said paragraph XI.

11. United States denies the allegation in subdivision 11 of said paragraph XI that the statement quoted from page 640 of

164 the Commission's report, in its said docket no. 25135, is insufficient as a finding concerning the amount of revenue which would be derived by adding the surcharges to intrastate shipments exempted therefrom by the Louisiana Commission.

12. United States denies the allegations contained in subdivision 12 of said paragraph XI.

(There is no paragraph XII in the copy of the petition served upon the United States.)

V

United States, for answer to paragraph XIII of the petition, admits that said order of November 7 will become effective, and that rates resulting from the surcharges on said commodities will be charged on intrastate shipments within Louisiana unless said order is enjoined and annulled, but United States denies that said order is illegal, invalid, null, and void or beyond the power of said Commission, and particularly denies that it will result in irreparable or other legal injury to the State of Louisiana, the Louisiana Highway Commission, or other shippers of said commodities within the State of Louisiana.

VI

United States denies that the allegations contained in paragraph XIV of the petition is or can be relevant or material to the issues raised in this suit or to the validity of said order of the Interstate Commerce Commission.

Except as herein expressly admitted, United States denies each and every allegation of the petition and the several paragraphs and subdivisions thereof.

Wherefore, having fully answered the petition, United States prays that the relief therein prayed be denied and the petition dismissed with costs to the plaintiffs, and that it have the benefit of such other and further orders, decrees, or relief as may be just and proper.

(Signed) ELMER B. COLLINS,
Special Assistant to the Attorney General.

(Sgd.) JOHN LORD O'BRIAN,
The Assistant to the Attorney General.

(Sgd.) EDMOND E. TALBOT,
United States Attorney.

165 [*Duly sworn to by Elmer B. Collins; jurat omitted in printing.*]

166 In United States District Court

[Title omitted.]

Answer of Interstate Commerce Commission

Filed November 28, 1932

The Interstate Commerce Commission, defendant in the above-entitled suit, hereinafter called the Commission, now and at all times

hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering the opening paragraph and paragraph I of the bill of complaint, the Commission admits that the allegations therein contained are true.

II

Answering paragraphs II to XIV, inclusive, of the bill of complaint, the Commission admits and alleges that, in a proceeding then pending before it, namely, No. 25135, Increases in Intrastate Freight Rates and Charges, it made and issued the report dated September 29, 1932, which is referred to in paragraph IV and a copy whereof is attached to the bill of complaint, marked "Exhibit A", and that, subsequently, in "Part 5—Louisiana" of said proceeding it made and entered the order dated November 7, 1932, a copy whereof is set forth in paragraph II of the bill of complaint; admits and alleges that theretofore, in an earlier proceeding entitled "Fifteen Percent case, 1931, Ex parte 103," it made and issued the report dated October 16, 1931 (178 I.C.C. 539) and the supplemental report dated December 5, 1931 (179 I.C.C. 215), which are referred to in paragraph VII of the bill of complaint and copies whereof are
167 attached to said bill of complaint marked "Exhibit B" and "Exhibit C", respectively; admits and alleges that by its said reports in said Fifteen Percent case, 1931, is authorized throughout the country on certain commodities therein specified increases in interstate rates varying from 6 to 12 cents per ton to two cents per 100 pounds subject to a maximum increase of 10 percent in the charge on any shipment, which said authorized increases were to expire March 31, 1933, in the absence of action to the contrary duly taken by the Commission; admits and alleges that, following issuance of said reports in said Fifteen Percent case, 1931, the carriers throughout the United States, including those operating in the State of Louisiana, published and applied the increases allowed on interstate traffic, and that said carriers, operating in the State of Louisiana, petitioned the Louisiana Public Service Commission for authority to apply corresponding increases on Louisiana intrastate traffic, which petition was granted in part but was denied as to the rates on 37 commodities and all less-than-carload rates; admits and alleges that, thereafter, said carriers operating in Louisiana, and carriers operating in certain other States, whose rate-regulating bodies had denied similar petitions, filed with this Commission their petitions complaining of the intrastate rates involved and invokng the Com-

mission's jurisdiction and action under paragraphs (3) and (4) of section 13 of the Interstate Commerce Act; admits and alleges that pursuant to said petitions, it instituted the proceeding entitled "No. 25135, Increases in Intrastate Freight Rates," wherein it made and issued the above-mentioned report dated September 29, 1932, and in part 5—Louisiana whereof, it made and entered the above-mentioned order of November 7, 1932, which is the subject matter of this suit.

Further answering paragraph II to XIV, inclusive of the bill of complaint, the Commission alleges that said proceeding entitled "No. 25135, Increases in Intrastate Freight Rates", was divided into several parts, one for each State whose rates were brought in issue, and that a separate hearing was had and a separate record was made as to each said part; that in part 5—Louisiana, wherein said order of November 7, 1932, was entered, a separate hearing was had at which a separate record was made up and considered separately by the Commission; that at said hearing and in all proceedings in connection therewith the Louisiana Public Service Commission, the Louisiana Highway Commission and various Louisiana shipping interest, were represented by their attorneys
168 who took an active part in the development of the record therein; that at said hearing the Commission accorded to all parties to said proceeding, including the Louisiana Public Service Commission, the Louisiana Highway Commission, and said shipping interest', full and fair opportunity to be heard upon all matters involved in said investigation; that at said hearing a large volume of testimony and other evidence upon said matters was submitted to the Commission for consideration on behalf of said parties, including the Louisiana Public Service Commission and the Louisiana Highway Commission, plaintiffs herein, by their respective counsel; that at said hearing and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, whereupon the Commission determined said matters and entered its said report of September 29, 1932, and its said order of November 7, 1932, which said report and order included the Commission's decision, conclusions, orders, and requirements in the premises; and that upon the evidence aforesaid and as shown in and by said report and order, the Commission made the findings, stated the conclusions, and prescribed the rules and regulations and terms and conditions upon which the said order is based.

The Commission further alleges that said findings, conclusions, rules, and regulations and terms and conditions were and are, and that each of them was and is, fully supported by the evidence submitted to the Commission in said proceeding as aforesaid, and the Commission denies each of and all the allegations to the contrary contained in the bill of complaint.

Further answering paragraph VII of the bill of complaint, the Commission denies that said paragraph sets forth fully and correctly the findings, authorizations, and requirements contained in the reports made and issued by the Commission in the Fifteen Percent case, 1931, 178 I.C.C. 539, 179 I.C.C. 215, and the Commission respectfully refers the court to its said reports for full information in the premises.

Further answering paragraph XII of the bill of complaint, the Commission denies that its order of November 7, 1932, is either illegal, null, void, or of no effect either for the reasons therein stated or for any other reasons; and the Commission further
169 denies that the statements in said paragraph relating to its reports made and issued in said Fifteen Percent case, 1931, and relating to its report in no. 25135, Increases in Intrastate Freight Rates, set forth fully and correctly the findings, authorizations, and requirements contained in said reports, and the Commission respectfully refers the court to said reports for full information in the premises.

Further answering paragraph XIII of the bill of complaint, the Commission denies the truth of each of and all the allegations therein contained; and the Commission specifically denies that the increased charges prescribed by the Commission in its said order of November 7, 1932, will subject the plaintiffs or anyone else either to irreparable injury or to any legal injury.

Further answering paragraph XIV of the bill of complaint, the Commission denies the truth of the allegation that the prescribed increases in rates will "cause the traffic in such commodities to leave the rails and seek other and cheaper means of transportation, and thus result in additional loss of revenues to the railroads by the loss of such traffic."

The Commission further alleges that in making its said report of September 29, 1932, and its said order of November 7, 1932, it considered and weighed carefully in the light of its own knowledge and experience each fact, circumstance, and condition called to its attention on behalf of the parties to said proceeding by their respective counsel, including all matters covered by the material allegations of the bill of complaint herein.

The Commission further alleges that said order of November 7, 1932, was not made and entered either arbitrarily or unjustly or contrary to the relevant evidence or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it or exercise that authority in an unreasonable manner; and the Commission denies each of and all the allegations to the contrary contained in the bill of complaint.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the bill of complaint insofar as they conflict either with the allegations herein or

with either the statements or conclusions of fact included in
170 said report of September 29, 1932, and order of November 7, 1932, which report and order are hereby referred to and made a part of this answer.

All of which matters and things the Commission is ready to aver, maintain and prove as this honorable court shall direct, and hereby prays that the bill of complaint herein be dismissed.

(Signed) INTERSTATE COMMERCE COMMISSION,
By NELSON THOMAS, *Attorney.*
(Sgd) DANIEL W. KNOWLTON,
Chief Counsel, of Counsel.

[*Duly sworn to by Joseph B. Eastman; jurat omitted in printing.*]

171 In United States District Court

[Title omitted.]

Intervention of Texas and New Orleans Railroad Company et al.

Filed November 28, 1932

To the Honorable the District Court of the United States for the Eastern District of Louisiana, New Orleans Division:

The petition of intervention of Texas and New Orleans Railroad Company, Arkansas & Louisiana Missouri Railway Company, Chicago, Rock Island and Pacific Railway Company, the Christie & Eastern Railway Company, Gulf, Colorado and Santa Fe Railway Company, Illinois Central Railroad Company, Kansas City Southern Railway Company, the Louisiana & Arkansas Railway Company, Louisiana & North West Railroad Company, Louisville & Nashville Railroad Company, Mansfield Railway & Transportation Company, Missouri Pacific Railway Company, New Iberia & Northern Railroad Company, New Orleans and Northeastern Railroad Company, New Orleans, Texas & Mexico Railway Company, Natchez, Urania and Ruston Railway Company, the New Orleans and Lower Coast Railroad Company, Ouachita and Northwestern Railroad Company, Red River and Gulf Railroad, St. Louis Southwestern Railway Company, Sibley, Lake Bisteneau & Southern Railway Company, the Tremont & Gulf Railway Company, the Yazoo and Mississippi Valley Railroad Company, the Texas and Pacific Railway Company, filed with leave of court first obtained, respectfully shows:

(a)

Intervenor, Texas and New Orleans Railroad Company, now is and at all times hereinafter mentioned was a corporation organized under the laws of the State of Texas and domiciled in the city of Houston, in said State, of which State it was and is a citizen and resident.

Intervenor, Arkansas & Louisiana Missouri Railway Company, now is and at all times hereinafter mentioned was a corporation organized under the laws of the State of Louisiana and domiciled in the city of Monroe, in said State, of which State it was and is a citizen and resident.

172 Intervenor, Chicago, Rock Island and Pacific Railway Company, now is and at all times hereinafter mentioned was a corporation organized under the laws of the State, of Iowa and Illinois and domiciled in the city of Chicago, Illinois, of which State it was and is a citizen and resident.

Intervenor, the Christie & Eastern Railway Company, now is and at all times hereinafter mentioned was a corporation organized under the laws of the State of Louisiana and domiciled in the city of Shreveport, in said State, of which State it was and is a citizen and resident.

Intervenor, the Gulf, Colorado and Santa Fe Railway Company, now is and at all times hereinafter mentioned was a corporation organized under the laws of the State of Texas and domiciled in the city of Galveston, in said State, of which State it was and is a citizen and resident.

Intervenor, Illinois Central Railroad Company, now is and at all times hereinafter mentioned was a corporation organized under the laws of the State of Illinois and domiciled in the city of Chicago, in said State, of which State itw as and is a citizen and resident.

Intervenor, Kansas City Southern Railway Company, now is and at all times hereinafter mentioned was a corporation organized under the laws of the State of Missouri and domiciled in the city of Kansas City, in said State, of which State, it was and is a citizen and resident.

Intervenor, Louisiana and Arkansas Railway Company, now is and at all times mentioned was a corporation organized under the laws of the State, of Louisiana and Arkansas and domiciled in the city of Stamps, State of Arkansas, of which said State it was and is a citizen and resident.

Intervenor, Louisiana and North West Railroad Company, now is and at all times hereinafter mentioned was a corporation organized under the laws of the State of Louisiana and domiciled in the city of Homer, in said State, of which State it was and is a citizen and resident.

Intervenor, Mansfield Railway & Transportation Company, now is and at all times hereinafter mentioned was a corporation organized under the laws of the State of Kentucky and domiciled in the city of Louisville, in said State, of which State it was and is a citizen and resident.

Intervenor, Mansfield Railway & Transportation Company, now is and at all times hereinafter mentioned was a corporation organized under the laws of the State of Louisiana and domiciled in the city of Mansfield, in the State, of which State it was and is a citizen and resident.

173 Intervenor, Missouri Pacific Railroad Company, now is and at all times hereinafter mentioned was a corporation organized under the laws of the State of Missouri and domiciled in the city of St. Louis, in said State, of which it was and it a citizen and resident.

Intervenor, New Iberia & Northern Railroad Company, now is and at all times hereinafter mentioned was a corporation organized under the laws of the State of Louisiana and domiciled in the city of New Orleans, in said State, of which State it was and is a citizen and resident.

Intervenor, New Orleans and Northeastern Railroad Company, now is and at all times hereinafter mentioned was a corporation organized under the laws of the State of Louisiana and domiciled in the city of New Orleans, in said State, of which State it was and is a citizen and resident.

Intervenor, New Orleans, Texas & Mexico Railway Company, now is and at all times hereinafter mentioned was a corporation organized under the laws of the State of Louisiana and domiciled in the city of New Orleans, in said State, of which State it was and is a citizen and resident.

Intervenor, Natchez, Urania and Ruston Railway Company, now is and at all times hereinafter mentioned was a corporation organized under the laws of the State of Louisiana and domiciled in the city of New Orleans, in said State, of which State it was and is a citizen and resident.

Intervenor, New Orleans and Lower Coast Railroad Company, now is and at all times hereinafter mentioned was a corporation organized under the laws of the State of Louisiana and domiciled in the city of New Orleans, in said State, of which State it was and is a citizen and resident.

Intervenor, Ouachita and Northwestern Railroad Company, now is and at all times hereinafter mentioned was a corporation organized under the laws of the State of Louisiana and domiciled in the city of Clarks, in said State, of which State it was and is a citizen and resident.

Intervenor, Red River and Gulf Railroad, now is and at all times hereinafter mentioned was a corporation organized under the laws of the State of Louisiana and domiciled in the city of Alexandria, in said State, of which State it was and is a citizen and resident.

174 Intervenor, St. Louis Southwestern Railway Company, now is and at all times hereinafter mentioned was a corporation organized under the laws of the State of Missouri and domiciled in the city of St. Louis, in said State, of which State it was and is a citizen and resident.

Intervenor, Sibley, Lake Bisteneau & Southern Railway Company, now is and at all times hereinafter mentioned was a corporation organized under the laws of the State of Louisiana and domiciled in the city of Kansas City, in the State of Missouri, of which State it was and is a citizen and resident.

Intervenor, Tremont & Gulf Railway Company, now is and at all times hereinafter mentioned was a corporation organized under the laws of the State of Louisiana and domiciled in the city of Joyce, in said State, of which State it was and is a citizen and resident.

Intervenor, Yazoo & Mississippi Valley Railroad Company, now is and at all times hereinafter mentioned was a corporation organized under the laws of the State of Louisiana, Mississippi, and Tennessee and domiciled in the city of New Orleans, in the State of Louisiana, of which State it was and is a citizen and resident.

Intervenor, Texas and Pacific Railway Company, now is and at all times hereinafter mentioned was a corporation organized by act of Congress and domiciled in the city of Dallas, in the State of Texas, of which State it was and is a citizen and resident.

Each of said intervenors is and for many years past has been engaged in operating a railroad within the State of Louisiana, extending in itself or in connection with other railroads and systems into other States of the United States, and is and has been a common carrier of freight by railroad within the State of Louisiana, engaged in the business as such common carrier of transporting freight intrastate between points in the State of Louisiana and points in other States, and is and at all times hereinafter mentioned was a common carrier of freight by railroad subject to the provisions of the acts of Congress known as the "Interstate Commerce Act" and "Transportation Act, 1920", and each of the said intervenors is vitally interested in the subject matter of this complaint and desires to intervene therein on behalf of the defendants, and, as such, to answer the bill of complaint herein and to participate in the trial of the said complaint as a party defendant.

175 (I)

For answer to article I of the complaint, intervenors admit the allegations therein contained, but show that said Commission is subject to the paramount authority of the Interstate Commerce Commission on all questions of unlawful discrimination of intrastate rates against interstate commerce.

(II)

For answer to article II of the complaint, intervenors admit the allegations therein contained. Intervenors appear in support of the orders of the Interstate Commerce Commission, the validity of which is challenged, and aver that said orders were and are valid and constitute and constituted lawful exercises of the powers of the Interstate Commerce Commission.

(III)

For answer to article III of the complaint, intervenors deny the allegations therein contained, and particularly deny that the order or orders of the Interstate Commerce Commission assailed were or are ultra vires or null or void.

(IV)

For answer to article IV of the said complaint, intervenors admit the allegations therein contained.

(V)

For answer to article V of the said complaint, intervenors admit the allegations therein contained, but intervenors show that certain testimony on the question of the financial needs of the carriers, applicable to all of the State cases, including the Louisiana case, was offered in the general 25135 case.

(VI)

For answer to article VI of the said complaint, intervenors admit the allegations therein contained, subject to what is said in the last preceding article.

(VII)

For answer to article VII of the said complaint, intervenors admit the allegations therein contained, but deny that the particular excerpts from the opinions and orders of the Interstate Commerce Commission present a fair or complete picture of the said opinions and orders, and aver that such opinions and orders must be taken and considered as a whole.

176 (VIII)

For answer to article VIII of the said complaint, intervenors admit the allegations therein contained, and show that an application similar to the one made to the Louisiana Public Service Commission was made to the similar regulatory body of each of the other States of the United States.

(IX)

For answer to article IX of the said complaint, intervenors deny the allegations therein contained, save as may appear from the orders of the Louisiana Public Service Commission of February 8, 1932, and March 3, 1932, referred to in the said article.

(X)

For answer to article X of the said complaint, intervenors admit that exhibit D attached to plaintiff's petition constitutes a copy of the orders of the Louisiana Public Service Commission in question, but deny the allegations of the said article, save as may appear from the said report and orders themselves. Defendants particularly deny the matters and things stated in the said report and deny that the said orders of the Louisiana Commission were or are lawful or valid.

(XI)

For answer to article XI of the said complaint, intervenors admit that following the refusal of the Louisiana Commission to permit, on traffic between points in the State of Louisiana, the imposition of the emergency charges authorized by the Interstate Commerce Commission on interstate traffic, the carriers filed their petition with the Interstate Commerce Commission under section 13 of the Interstate Commerce Act, and that as a result of the said petition the Interstate Commerce Commission entered its report of September 29, 1932, and its order of November 7, 1932, which report and order were and are wholly and entirely just and lawful. Each and all of the other allegations of article XI are denied.

(XIII)

For answer to article XIII of the said complaint (there being no article XII), intervenors deny the allegations therein contained.

(XIV)

For answer to article XIV of the said complaint, intervenors deny the allegations therein contained.

177 (XV)

Further answering, intervenors aver that the paramount regulatory authority of common carriers of freight and passengers for hire is the Interstate Commerce Commission, by virtue of the powers vested in it by the Congress of the United States under and in accordance with paragraph 3 of section 8 of article I of the Constitution of the United States, and intervenors show that, as to the subject matter of this complaint, the action of the Louisiana Public Service Commission, if upheld, would result in unjust discrimination against interstate commerce and undue preference in favor of intrastate commerce between points in Louisiana. Intervenors show that, on June 17, 1931, the carriers by railroad and by water throughout the United States, subject to the jurisdiction of the Interstate Commerce Commission, filed an application with the said Commission alleging that an emergency existed threatening serious impairment of their financial resources and their capacity to assure the public a continuance of efficient and adequate service, and asked for authority to make a general increase of 15% in all their all-rail and rail-water interstate and international freight rates and charges. Similar applications for a general increase of 15% in intrastate freight rates and charges were filed with the state regulatory bodies exercising dominion and control over intrastate freight rates and charges of common carriers operating within the several States of the Union, including the State of Louisiana. The proceedings before the Interstate Commerce Commission, as a result of this application, were

known as "Fifteen Percent Case, 1931, Ex parte No. 103, In the Matter of Increases in Freight Rates and Charges", and all of the State commissions, including the Louisiana Public Service Commission, were notified of the said proceeding and were invited to cooperate in the hearings before the Interstate Commerce Commission. In the said proceedings there were numerous and extensive hearings, during the course of which all parties who desired to be heard were given an opportunity to offer testimony and to present their views. After such full hearing and after full argument, the Interstate Commerce Commission entered its report and order of October 16, 1931, reported 178 I.C.C. 539, in which, for the reasons therein stated, it denied the application of the carriers, but suggested the wisdom and propriety of making certain emergency increases on certain limited commodities in order to meet the situation.

In line with this suggestion, there was further argument before
178 the Interstate Commerce Commission and further consideration by that Commission, as a result of which the said Commission entered its supplemental report of December 5, 1931, reported 179 I.C.C. 215, in which it authorized certain stated emergency increases on rates and charges on certain specified commodities. Such increases in the interstate rates and charges on the said commodities were made effective on or about January 4, 1932, and have since remained in effect.

Following the opinion and order of the Interstate Commerce Commission of December 5, 1931, similar applications were filed with the rate regulatory bodies exercising dominion and control of intrastate freight rates and charges of common carriers operating within the several States of the Union, including the Louisiana Public Service Commission, as to intrastate rates and charges. Hearing on such application before the Louisiana Public Service Commission was held on January 26, 1932, and that commission entered its order no. 895 on February 8, 1932 (which was slightly modified by its subsequent order no. 897 of March 3, 1932), the effect of which orders was to deny the application of the carriers on practically all traffic of any importance. The result of the action of the Louisiana Public Service Commission being to deny to the carriers the relief sought and vitally needed and to create unjust discrimination against interstate commerce and undue preference of intrastate commerce between points in the State of Louisiana, the Louisiana carriers joined the carriers of other States in which the State commissions had, to varying extents (but all far less than in the State of Louisiana) denied to the carriers the right to make emergency increases in their rates and charges similar to those which had already been made in their interstate rates and charges, in accordance with the order of the Interstate Commerce Commission in filing a thirteenth section complaint before the Interstate Commerce Commission, having for its purpose the removal of the said unjust discrimination and undue preference. This complaint was known as docket no. 25135 of the

Interstate Commerce Commission, "Increases in Intrastate Freight Rates," and, for purposes of hearing, was subdivided into various parts, part 5 being devoted to the Louisiana discriminations. After full hearings and full argument, the Interstate Commerce Commission, on September 29, 1932, handed down an opinion,
179 reported 186 I.C.C. 615, making certain findings, but entered no definite thirteenth section order. As to Louisiana, the unjust discrimination and undue preference charged was found to exist. The Interstate Commerce Commission stated at page 664 of its said report and order

"Orders will also be entered in accordance with the foregoing findings, except where State commissions directly involved notify us on or before November 1, 1932, that they will promptly permit the increases herein required. If an order is necessary in any part, it will be issued on or immediately after the above date and require the establishment of the increased rates on short notice."

The Louisiana Commission, refusing and declining to remove the unjust discrimination and undue preference, the Interstate Commerce Commission, on November 7, 1932, entered a definite thirteenth section order directing the removal, by the carriers, of the said unjust discrimination and undue preference, the effective date of the said order being December 16, 1932. Your intervenors allege and aver there was ample evidence before the Interstate Commerce Commission warranting and justifying all of its findings, conclusions, and orders.

(Signed) ESMOND PHELPS,
" SELIM B. LEMLE,
" HARRY MCCALL,
Attorneys for Intervenors other than N. O. & N. E. R.R. Co.
N. O. & N. E. R.R. Co.,
By J. BLANC MONROE, *Atty.*

[*Duly sworn to by Harry McCall; jurat omitted in printing.*]

180 In United States District Court

Order allowing intervention

Considering the foregoing petition and the affidavit thereto, it is ordered that the above petitioners be and they hereby are authorized to file the foregoing petition of intervention and to appear herein as parties defendant in the same manner and with like effect as of they were named in the original bill of complaint herein filed.

(Signed) WAYNE G. BORAH,
United States District Judge.

NEW ORLEANS, LOUISIANA,
November 28, 1932.

181 In United States District Court

[Title omitted.]

Stipulation in re statement of evidence

Filed March 6, 1933

Subject to the approval of the district court, it is hereby stipulated and agreed by and between counsel for the parties hereto, as follows:

That the attached folio, consisting of 84 typewritten pages, constitutes a true and correct statement in condensed and narrative form of all the testimony taken and a description of the exhibits filed before the Interstate Commerce Commission, offered and received in evidence in the district court and now on file with the clerk thereof. That said folio, together with this stipulation, shall be included in the certified transcript of the record on appeal to the Supreme Court in lieu of the full transcript of testimony given before the Commission in said proceeding.

That there shall also be included in the certified transcript of record on appeal to the Supreme Court, certified copies of all of the exhibits which have been admitted in evidence in this cause.

This 6th day of March, 1933.

Approved:
(Signed)
RUFUS E. FOSTER,
Circuit Judge.

Approved:
(Signed)
WAYNE G. BORAH,
District Judge.

Approved:
(Signed)
ALLEN COX,
District Judge.

Signatures by Harry McCall

(Signed) E. E. TALBOT,
Attorney for United States,

(Signed) ELMER B. COLLINS,
Special Assistant to the Attorney General,

(Signed) NELSON THOMAS,
Attorney for Interstate Commerce Commission,

(Signed) HARRY MCCALL,
Attorney for defendant railroad companies other than New Orleans & Northeastern Railroad Company,

(Signed) J. BLANC MONROE,
Attorney for New Orleans & Northeastern Railroad Company, Appellants.

(Signed) WYLIE M. BARROW,
Special Assistant to the Attorney General of Louisiana, Attorney for Appellees.

182 In United States District Court

Condensed statement of evidence before the Interstate Commerce Commission in increases in intrastate freight rates and charges, docket no. 25135, part 5.

Filed March 6, 1933

Statement of proceedings and testimony at hearing before examiner of the Interstate Commerce Commission begun at New Orleans, La., May 6, 1932, in Increases in Intrastate Freight Rates and Charges, docket no. 25135, part 5, record of which hearing is included in certified copy of transcript of the record of the evidence and proceedings in said proceeding, offered in evidence by counsel for plaintiffs at the hearing of the case of State of Louisiana et al. v. United States of America et al., in the District Court of the United States for the Eastern District of Louisiana, November 28, 1932, also statement describing exhibits, to which copies of the exhibits are attached (but the exhibits are in addition to the 84 pages referred to in the foregoing stipulation).

183 *Offers in evidence*

At the opening of the hearing at New Orleans, La., May 6, 1932, before the Interstate Commerce Commission's examiner, counsel for the carriers introduced in evidence the following exhibits.

Exhibit 1.—Copy of report of the Interstate Commerce Commission in the Fifteen Percent Case, 1931, ex parte 103, dated October 16, 1931, 178 I.C.C. 539.

Exhibit 2.—Copy of supplemental report in the same case made December 15, 1931, 179 I.C.C. 215.

Exhibit 3.—Copy of application filed by the carriers with Louisiana Public Service Commission asking increases in rates and charges within the State of Louisiana similar to that requested of the Interstate Commerce Commission, said petition being dated July 2, 1931.

Exhibit 4.—Copy of amended application of carriers to Louisiana Public Service Commission, dated December 19, 1931, with attached schedule.

Exhibit 5.—Copy of application of the east side carriers to the Louisiana Public Service Commission presented June 20, 1931.

Exhibit 6.—Copy of Louisiana Public Service Commission's order no. 898, dated February 8, 1932.

Exhibit 7.—Amendment to aforesaid order dated March 3, 1932 (amendment being numbered order no. 901).

184 R. A. SCHMIDT, witness for carriers, testified:

I am chief clerk to auditor of freight accounts of the Gulf Coast Lines. I am familiar with accounting. I have prepared a statement showing the 1931 movement in Louisiana over the Gulf Coast Lines of certain commodities excepted in Louisiana Public Service Commission order.

(Statement received in evidence as carriers' exhibit no. 8.)

According to the statement the Gulf Coast Lines would in 1931 have received revenue increase to the amount of $26,420.12, had the increases authorized by the I.C.C. been applied to Louisiana State traffic on the basis of actual movement. The total is made up of small amounts except upon sand, gravel, crushed stone, and paving material, aggregating $19,050, and sugarcane, $4,482.75. The figures shown in the last column represent the difference which would result from an application of the increases sought by the carriers but denied by the Louisiana Public Service Commission.

Cross-examination

I do not know why the year 1931 was selected as the period to be covered by exhibit 8. I don't know of any figures presented to the Interstate Commerce Commission showing the same character of movement over Gulf Coast Lines. I was not present at the hearing before the Louisiana Public Service Commission when the application of the carriers was presented asking that they be allowed to make the same surcharges on intrastate traffic as were allowed by the Interstate Commerce Commission. The statement includes figures upon revenues on everything included in the I.C.C.
185 classification of commodity fertilizer. The Gulf Coast Lines have no special rates on fertilizer in the State of Louisiana. I am not a rate man and obtained data for the statement as to volume of movement figured into exhibit 8 from actual waybills and accounts. In order to arrive at the figure in the last column indicating volume of traffic, we took the total tons of each commodity and applied the increased freight rate as authorized by the I.C.C., either in tons or so much per car, depending on the commodity, for fertilizer, applied 20 cents per ton to 1,500 tons, and the same is true as to about all the commodities except sugarcane, for which we figured a 10 percent increase. This was because our sugarcane rate was very low, being below that authorized. The Interstate Commerce Commission allowed an increase of 1 cent per 100 pounds upon sugar. On sand and gravel the increased revenues were estimated upon the basis of 6 cents per ton, the increase authorized by the Interstate Commerce Commission. Upon pulpwood we used 10 percent of the freight charges. I did not apply the percentages to the freight charges all the way through, but did apply the percentage of the freight charges upon staves, bolts, or split logs, which moved upon a per-car rate. We took each commodity and applied the increases authorized by the I.C.C., observing 10 percent increase as the maximum. My figures are not estimates; they are based on actual movement. The figures shown in the last column under "Estimate increase" is an estimate based on the actual 1931 movement, to which we applied the charges we would have assessed had we used the increase granted by the Interstate Commerce Commission, observing 10 percent as a maximum. As to less-than-carload freight, we arrived at the figures shown by taking

the total amount of such freight and assessing 2 cents a hundred.

We made no check of what the actual increase would be on
186 less-than-carload freight on each movement. It is an arbitrary increase by me, not having time to do otherwise. The Commission has authorized an increase on all commodities here. After ascertaining our intrastate tonnage we applied the increases authorized, observing 10 percent of the through charge as a maximum, and that is as near actual as possible. That is where I obtained figures for everything except less carload. As to gravel, we applied 6 percent straight, or 6 cents a ton.

I don't know the mileage of the Gulf Coast Lines in Louisiana. The statement, exhibit 8, does not show the Louisiana intrastate traffic originating at and destined to points on the Gulf Coast Lines only. It is a statement showing traffic delivered at points on the Gulf Coast Lines only. It also includes traffic we received from connecting lines in Louisiana. Gulf Coast connections in Louisiana are: Missouri Pacific at Kinder, Rock Island at Eunice, T. & P. at Anchorage, K.C.S. at Quincy, T. & P. at Livonia and Opelousas. This statement is based upon traffic delivered by our lines only. The item for sugarcane, $4,842.75, is 10 percent of the total freight charges assessed on 71,340 tons. We arrived at the amount of the total freight charges from the billing, itemizing every waybill monthly and segregating them. Insofar as the I.C.C. classification is concerned, we have monthly reports with respect to all other commodities involved. It was not necessary for us to turn those waybills. We have a monthly report as to less-carload freight and it is not necessary for us to turn those waybills. We know that a shipment received from the Missouri Pacific at Kinder originated at a point in Louisiana on the Missouri Pacific because we maintain a State and interstate separation of all shipments in our statistical bureau. The figure of

1,375 tons is total intrastate movement, some of which, I can-
187 not state the exact amount, was received from connecting lines, being a very small proportion of the less-carload freight. It was small because the truck got it. Our less-than-carload rate is very low. The only explanation I can give of our low less-than-carload tonnage and earnings is the trucks. The Gulf Coast Lines do not operate any trucks in Louisiana in connection with its rail lines.

My duties are those of accounting officer and overcharge claim agent. I have no knowledge of conditions in Louisiana that bring about the tonnage and revenues as shown in exhibit 8 or the conditions that account for low less-carload tonnage or the tonnage on any commodity. I don't know anything about the movement of vegetables amounting only to 110 tons; my knowledge being confined to the records of the Gulf Coast Lines. The same answer applies to pulpwood, as well as all other commodities listed on the statement. Our estimated increase in revenue upon pulpwood is 10 percent of existing freight charges, assuming that the increased rates would apply upon a per-car basis, using the total freight charges collected. I do not know of finding any instance where the

charges were collected on a per-car basis. I have made no analysis of figures for 1932 to determine how they would compare with the figures shown in the statement, exhibit 8. The figures for the first few months of 1932 will be out the 15th of May. We had no figures for 1932 of which we could make a study for the corresponding months of 1931. The tonnage of a car of fertilizer moving from New Orleans to a point on the Gulf Coast Lines, it being actually an imported shipment, would not be included in the list. The expected increased revenue stated upon the list represents the entire revenue on through charges and not the proportion of the freight the Gulf Coast Lines would receive. The classification used is that of the Interstate Commerce Commission in its statistical classifica-
188 tions but is not in the order fixing the rates on the commodities in question.

W. H. MALCOLM, called by the carriers, testified:

I am auditor of freight receipts for the Missouri Pacific System. I have prepared exhibits.

(Exhibits received in evidence marked "Carriers' Exhibits 9 and 10," respectively, witness Malcolm.)

Exhibit 9 is a statement for the Missouri Pacific System somewhat similar to the one just put in by Mr. Schmidt for the Gulf Coast Lines (referring to carriers' exhibit 8). Exhibit 9 applies solely to shipments delivered by the Missouri Pacific System and to the total revenue on such shipments. The exhibit shows the approximate loss of revenue per year to the rail carriers in Louisiana on Louisian' intrastate traffic destined to points on the Missouri Pacific System, provided the exemptions on intrastate movement as authorized by the Louisiana Public Service Commission's order no. 898 remain in force. The statement is based on the tonnage handled to destinations on the Missouri Pacific Railroad during the calendar year 1931, figures being taken from Missouri Pacific records.

Exhibit 10 is a similar statement with respect to similar traffic over New Orleans & Lower Coast Railroad.

Cross-examination

By using the words "approximate loss of revenue per year" in heading of exhibit 9, I mean that the statement is based on tonnage for 1931 and necessarily would be an approximation of what would happen in 1932, assuming the volume of business would be the same. I have no figures for 1932 traffic to check against those of 1931 to show whether the volume of business is the same so far. I
189 cannot say what has been the experience of the Missouri Pacific in Louisiana during the last six months as to increases or decreases in tonnage on the commodities involved, since I have not made any check of the recent movements. The column headed "Present rates" is a statement of freight charges assessed on these commodities. Against that we have applied the emergency increases provided for on interstate traffic, and the second column is merely the total of the first and third columns. The figures which

purport to show the present rates should be stated revenue under present rates. The figures under "Including emergency increase" represents actual increases which would have taken place had the surcharges been applied on this traffic. The figures under the column "Tons" is an actual statistical compilation of the tonnage and revenue for each month by commodities.

In exhibit 10, on sand and gravel, is shown a loss of $772.80, which would have been the amount of the emergency increase that would have been applied to that traffic had it been subject to the interstate emergency increases. I did not take into consideration in exhibit 10 any increases that have been allowed by the Louisiana Public Service Commission on this item of sand and gravel east of the river. I know of no such increases. There is no movement east of the river. The Missouri Pacific does not get any tonnage that I know of from the N. O. & L. C. going east of the river. I did not check the waybills in detail to see as to this. If there are any recent advances allowed by the Louisiana Public Service Commission on intrastate traffic in sand and gravel, etc., I don't know. The commodities covered by the statement are those that we handle intrastate and were exempted under the Louisiana Public Service Commission's order. I included soya beans in exhibit 9 because soya beans have been eliminated under the interstate rates, but this exhibit was
190 based on the order. I do not know of any other commodity than soya beans to be similarly situated. We have similar data relative to similar traffic for January and February 1932, but I have not them with me and really don't know what they show. As to the source of my information used in the statements, we keep a monthly report on every commodity in accordance with the Interstate Commerce Commission classification, the statement of tonnage and revenue by commodities monthly. Some commodities are complete in and of themselves according to said classification; as to others the classification includes other commodities than those exempted under the Louisiana order. In those cases we went back to the record to determine tonnage and revenue therefrom, but we did not do so as to commodities that were not so exempted. We did not in detail examine every waybill as to data relative to commodities. I would not say that figures in the statements are estimated because we did not examine every waybill. As to the figure of 8,696 tons of less-than-carload freight, for each waybill upon each movement of such freight we punch a card to separate that movement as between State and interstate. There is a commodity number for merchandise, so that all of our less-carload tonnage intrastate is run out and separated each month both local and interline. The statements are separated and brought together for our commodity statistics, and this plan was followed in connection with all other commodities shown in exhibit 9. With respect to the process gone through with in compiling statement exhibit 9, as to stave bolts as an example, we have what we call a rought-material report of all tonnage into and out of mill points; stave bolts we have segregated from other commodities. I set a man to work on that and the figures are what he

produced. These rough-material reports come from local agents at points of origin. A large less-carload shipment weighing
191 15,000 pounds of merchandise on which carload charges would be less than the less-carload charges would go in carload figures. In exhibit 9 the commodity designated 640, nitrate of soda, includes all nitrate of soda that moves on intrastate rates. In exhibit 10, item 430, lumber is included because I thought it was exempted on intrastate movement. Upon further consideration I believe that ought to come out, because I see that the Louisiana Public Service Commission order does not include lumber and is confined to stumps and refuse wood. The order excepted stave bolts and refuse wood. Lumber was under the same number but was not excepted. Hence the item lumber under 430 should not be included in exhibit 10. Both exhibits 9 and 10 were intended to show the total movement of all commodities over Missouri Pacific and New Orleans & Lower Coast lines that were exempted by the Louisiana Public Service Commission from the surcharge, and as far as I can find there were no other movements of any other commodities on which the surcharge was not allowed. The item of loss of $548.40 was included in exhibit 9, and is, I think, based upon all refined sugar rates; I don't think we handle any raw sugar.

192 J. E. HINES, called by the carriers, testified:

I am in charge of statistics, freight accounting department, T. & N. O. R.R., and am familiar with the records of the Southern Pacific Lines, particularly as to Louisiana business. I have prepared a statement as to Louisiana intrastate traffic of the commodities exempted by the order of the Louisiana Public Service Commission based on the movement for the calendar year 1931.

(Statement received in evidence as carriers' Exhibit No. 11, witness Hines.)

The statement was compiled from actual movements of shipments in 1931. The first column shows tonnage, the second one actual revenue collected, the fourth and last column shows the additional sum that would have been collected by application of the additional increases authorized by the Interstate Commerce Commission, and the third column is therefore simply the sum of the second and fourth columns. The figures are correctly taken from the record covering only delivered shipments, both interline and local, destined to points on the T. & N. O., and state the total revenue received, not merely the proportion received by the Southern Pacific.

Cross-examination

I have made no investigation as to the volume of less carload traffic since the end of the year 1931. I don't know whether it has increased or decreased. I live in Houston, Texas, and don't know anything about conditions along the Southern Pacific Railway as to competition. The accounting records, from which all figures used in exhibit 11 are taken, are kept in Houston. Shell, gravel, sand,

stone, broken or crushed, are separated according to the classification under which we report to the Interstate Commerce Com-
193 mission in their prescribed quarterly commodity statistic reports, which are not made in accordance with the actual application of the rates on the particular commodities. In making up the figures of the exhibit I have added the same advance in rates on each of the commodities above named, since such advance was allowed by the I.C.C., and is according to the tariff. If the tariff called for one advance on sand and gravel and another on broken stone and another on shells, I applied the particular advance. On broken stone and shell I applied the advance authorized by the Commission. The statement was made up under my supervision. I don't know offhand just what advances were applied on the items of sand and gravel, broken stone and shell. The advance applied on sugarcane in arriving at the revenue that would have been collected had the emergency rate applied was 10 percent; on bagasse 10 percent. An advance of 10 percent was figured upon other commodities. An advance on shells was figured at 10 percent; on sand and gravel, whatever the tariff called for, I think it is 6 cents a ton. The figures in the column "Revenue that would have been collected" are based upon the tariff rate in effect in 1931, plus the increases authorized by the Interstate Commerce Commission on interstate traffic. I am not a rate man and cannot tell you offhand just what increases the tariff authorizes as to the varied commodities. I worked the figures myself and arrived at the figure $1,971,996.09 in the column "Revenue that would have been collected" by applying the emergency increases authorized in the tariff against the revenue collected in 1931. On sand and gravel I applied the increase of 6 cents a ton with a maximum of 10 percent; on shells I think the increase is 1 cent with the maximum of 10 percent; on broken stone I figured an increase of 6 cents a ton with a maxi-
194 mum of 10 percent; on less carload freight I figured the increase at 2 cents a hundred upon the total tonnage, with a maximum of 10 percent. In arriving at the item of increase of less carload traffic, I took the total intrastate tonnage handled in 1931 and applied 2 cents a hundred to it. I have occasion at times to examine the freight bills, but have not so far. I don't recall having seen any waybills showing movement over rail and truck in Louisiana. I don't know anything about such movement, it would not come under my jurisdiction. Item 470 covers both refined and raw sugar, covering movement from New Orleans to Franklin or Sterling, if there was any. I included that on this statement because I presumed the rates would be applicable. If movement of raw sugar from New Orleans to Franklin were actually from New Orleans without the sugar being imported I imagine it would be an intrastate movement. I cannot say whether New Orleans produces raw sugar. Apparently none of the shipments covered by item 671, 185 tons of second-hand sugar bags with a loss of revenue of $74.18, were subject to the 10 percent limit; however, I could not testify

to each individual movement. The figures upon the sugar bags were produced by applying the rates 2 cents a hundred, 40 cents a ton, to the total tonnage. I don't know whether some of the shipments may not have been subject to the 10 percent limit. The other items were based on the tonnage. The item of bagasse, 30,147 tons, revenue loss of $2,679.46, is the maximum, 10 percent of the freight charges collected. The tonnage is actual weight, subject to the minimum on each of the cars. I have taken into consideration only the actual number of tons that freight charges were paid on.

Redirect examination

There is included in the statement no shipment not taking originally the intrastate rate. Any shipment taking an import rate was excluded. In testifying with reference to item 710 and
195 maybe one or two other items, I may by mistake have said 2 cents a ton when I should have said 2 cents a hundred.

196 J. T. EHRICHT, called by carriers, testified:

I am chief clerk for the auditor of the Texas & Pacific at Dallas, and am familiar with the Louisiana figures for that road. I have prepared a statement showing as to shipments delivered by the Texas & Pacific during 1931 on exempted commodities what the increase in revenues would have been had the increases sought, but denied by the Louisiana Public Service Commission, been applied.

(Statement received in evidence as carriers' exhibit no. 12, witness Ehricht.)

The statement shows the number of tons handled by the Texas & Pacific and delivered to destinations on its lines during 1931 as to commodities stated, regardless of where originating. The statement also shows estimated revenue which would have been derived had the increases allowed by the Interstate Commerce Commission been allowed by the Louisiana Commission on the same traffic intrastate in Louisiana. The element of weight shown is derived from the actual tonnage moved in 1931. The word "estimate" applies to the additional revenue that would have been received had the increased rates been in effect. The figures are true and correct according to the company's records.

Cross-examination

In making up exhibit 12 the classification sand and gravel includes everything in the commodity classification labeled "Gravel and sand, no. 350." Stone takes a different classification; it is 351. It takes the same rate of increase; I don't know whether the same rate. The revenue increase is figured at 6 cents per ton, subject to a 10 percent maximum. The increase was figured on the 1931 tonnage at 6 cents a ton, subject to a limit of 10 percent on the freight charges
197 collected on that commodity. We have no exhibit to show the amount of revenue received in 1931. The tonnage stated is all

that was delivered by the Texas & Pacific in 1931. No doubt some originated on connecting lines. I cannot say as to the relative quantity. I didn't check the expense and freight bills myself. I cannot say whether the company has any gravel deposits which originate tonnage on its own line in Louisiana. The Texas & Pacific in Louisiana connects with all lines entering Shreveport, Alexandria, South Mansfield, New Orleans, Opelousas; with Missouri Pacific at Alexandria, New Orleans; with Southern Pacific at Alexandria, Cheneyville. I don't believe that I have included in exhibit 12 any tonnage, a part of which has been included in other exhibits filed by other carriers herein. These statements are all prepared on a receiving line basis and therefore would include only tonnage delivered by the Texas & Pacific, regardless of where it originated. I understand all short lines would do the same. I am not familier with local conditions in Louisiana nor with anything about the movement where it originates and where destined. The figures used are taken entirely from my records and there was no effort made to take any account of movements. On gravel, sand, and broken stone I figured an increase of 6 cents a ton subject to 10 percent maximum. Each shipment was examined to see that the 6 cents per ton would not exceed 10 percent of the freight charges collected on that particular shipment. If it amounted to more than 10 percent the straight 10 percent was taken as the increased revenue. If it amounted to less than 10 percent, the 6 cents per ton increase was figured. Six cents a ton was used because that was the increase authorized by the Interstate Commerce Commission. I did not examine the Commission's order.

The figure was given to us in a letter as the rate of increase.
198 I don't know if the result would have been changed by the use of the figure of $3 per car increase. We didn't take the number of cars. I understand that paragraph 2 of the proviso to which the increases specified by the Commission were made subject (179 I.C.C., near top of page 240) limits the increases to dollars and cents per car in the event that the shipment moved on a carload rate, irrespective of weight, and my understanding is the sand and gravel moving on this exhibit all moved on rate per 100 pounds. The increase figured upon sand and gravel traffic was 10 percent, in the event 6 cents per ton would not produce less than that. I didn't figure the increase upon a car basis and cannot say what the increase per car would have been upon the movement for 1931.

(Counsel for Louisiana Public Service Commission requested the railroads to furnish, and moved that the examiner require them to furnish, information showing the number of cars which moved the tonnage of stone, sand, and gravel shown on exhibit 12 and on other exhibits too. The carriers declined to furnish said information and the examiner to require the carriers to furnish the same.)

The statement would cover shipments from Alexandria to New Orleans if it were a movement of the Texas & Pacific. Both the Texas & Pacific and the Missouri Pacific serve Alexandria and New Orleans, but the exhibits of the respective roads do not show the same

tonnage. If the Missouri Pacific had any tonnage from those points it would be included in the Missouri Pacific's exhibit and not in that of the Texas & Pacific. We have nothing to do with the Missouri Pacific records, and records are kept separate as to movements over the respective lines. As a matter of fact, the
199 Missouri Pacific is prohibited from handling the business from Alexandria to New Orleans. A shipment originating at Monroe, destined to a point south of Alexandria, if it is routed via the Missouri Pacific, would be included in the Missouri Pacific's exhibit. If routed via the Texas & Pacific, it would be in the Texas & Pacific's exhibit. The Missouri Pacific does not serve any point on the joint track between Alexandria and New Orleans. If there was a shipment going from a point on the T. & P., destined to a point on the Gulf Coast Lines, the junction being Opelousas, and there was no through billing arrangement via Opelousas in connection with the T. & P., we would endeavor to eliminate the shipment in making up data for exhibit 12, confining such data simply to traffic delivered on the T. & P. I would say there is very little traffic of the character just described. Most of our traffic moves on through billing. If it were moving on through billing there would be no instances where it would be reported among the receipts at the junction point on the T. & P. I believe that the tonnage included in my exhibit is confined to traffic delivered to points on the T. & P., excluding any that might have been moved to a junction point and rebilled.

With respect to the item bagasse, 4,556 tons, we observed the minimum weights on the cars subject to 10 percent minimum, the increases being figured on the actual weight which covered the freight charges. Business destined to the Celotex Company at Marerro, La., is reported at Harvey, I believe.

(The examiner, at the request of counsel for New Orleans Joint Traffic Bureau, required the carriers within ten days after the close of the hearing to supply for the record statements showing the various junction points on the respective railroads with their connecting lines in the State of Louisiana and of the interline billing they may have with those connecting lines.)

200 W. F. PREGGE, called by the carriers, testified:

I am assistant auditor for the Louisiana & Arkansas Railroad. My road was not able to make a complete statement as to all commodities as was made by the other roads in connection with this case, but I have prepared for it a statement showing the revenue we received on intrastate movement of sand, gravel, and crushed stone during the calendar year 1931, destined to points on the L. & A. The statement also shows the revenue that would have been collected upon said shipments had the increased rate been applicable and the amount of increase; also shows the number of cars and of tons. The statement consists of three sheets, one covering sand and gravel,

the other crushed stone, and the third a recapitulation of the three commodities.

(Said statement admitted in evidence as carriers' exhibit no. 13, witness Pregge.)

The statement covers all shipments of these commodities actually delivered by the L. & A.

Cross-examination

Exhibit 13 does not include any shipments which went to connections, but solely those local to the L. & A. It includes all such traffic delivered by the L. & A. to the consignee, including those received from connections as well as originated traffic. The accounting department was instructed to put figures for crushed stone in one statement and for sand and gravel in another. I do not know why. I do not know anything at all about the rates on various commodities. Shipments coming from other lines to the L. & A. move on interline waybills.

201 B. A. HOLLEY, called by the carriers, testified:

I am assistant to the auditor of revenue, Kansas City Southern Railroad, and have prepared a statement of that company's operations in Louisiana similar to the statements prepared by preceding witnesses. It correctly reflects the facts shown by the records of the K.C.S.

(Statement received in evidence as carriers' exhibit no. 14, witness Holley.)

Cross-examination

I am not qualified to testify to any questions except accounting questions. The item "Building, paving, road-making, and roofing materials, common shell, whole or crushed", on page 1 of exhibit 14 is a different item from that ordinarily described "Sand and gravel articles". I don't exactly know what we mean by paving or road-making materials except that we followed the list of the Louisiana Public Service Commission in order 898. I am not familiar with said order, but I have here a tariff which reads, "Issued in compliance with order 898 of the Louisiana Public Service Commission". The Kansas City Southern handles road-making material. I have separated road-making material from sand and gravel, shells, etc., according to the order. Item "Crushed stone", on page 2 of exhibit 14, does not include sand and gravel. It appears lower down in its alphabetical order, gravel next, and sand next; we have broken it up as to each commodity.

202 B. A. TRUDING, called by carriers, testified:

Our auditor for the New Orleans & N.E. Railroad Company furnished me with an estimated figure of $1,251, but he did not separate it as to what the commodities were. I have no figures for the

account of the said railroad company in line with these other statements which have been offered as to other railroads.

203 A. M. PIPER, called by the carriers, testified:

I am chief clerk in the auditor of freight receipts office of the Yazoo & Mississippi Valley and Illinois Central. I have been employed by the Illinois Central System 21 years. I have prepared a statement showing the actual revenue collected and the revenue which would accrue from the application of the emergency rates to the Louisiana intrastate traffic for the year 1931 on the Illinois Central System, on the commodities excepted by the order of the Louisiana Public Service Commission of February 8, 1932.

(Statement received in evidence as carriers' exhibit no. 15, witness Piper.)

The statement covers traffic over both the Illinois Central and the Yazoo & Mississippi Valley Railroads combined and is based upon shipments delivered by those two companies, including both local and interline. The group numbers shown in the first column of the statement are those shown on the Interstate Commerce Commission classification and also in the Commission's report in the Fifteen Percent case. The figures stated in exhibit 15 were all drawn from the records of the Illinois Central System and are true and correct to the best of my belief. I applied to the tonnage shown in the last column the emergency charges approved by the Commission subject to the 10 percent limitation. The grand total is $101.798.

I have also prepared a statement which shows the value of the Illinois Central built up in two ways—first, on the basis of the Commission's tentative valuation plus additions and betterments, material and supplies; and second, the investment in road and equipment as shown in the books plus materials and supplies, net railway operating income, and the rate of return shown from 1921 to 1931, inclusive.

204 (Statement received in evidence as carriers' exhibit no. 16, witness Piper.)

I have also prepared a similar exhibit showing the rate of return for the first three months of 1932.

(Statement received in evidence as carriers' exhibit no. 17, witness Piper.)

The figures shown in exhibits 16 and 17 are those reflected in the reports of the Illinois Central System to the Interstate Commerce Commission.

I have also prepared a statement of the Illinois Central System's revenue and expenses for the first three months of 1932 as compared with the same period of the years 1931, 1930, and 1929, the figures being likewise taken from reports to the Commission.

(Statement received in evidence as carriers' exhibit no. 18, witness Piper.)

The exhibit shows as net income for the first three months of 1932 a deficit of $840,121.

Cross-examination

In exhibit 15 the item sand and gravel, group no. 350, covers traffic that originated in Louisiana, not only on our own lines but also that received from connecting lines. I would not say whether it originated in Louisiana east or west of the Mississippi River. It might include both. I could include some tonnage that originated west of the river, say on the T. & P. or Southern Pacific. All tonnage included in exhibit 15 that originated on the Illinois Central east of the river went to points east of the river. No tonnage originating east of the river was destined to points west of the river. None of it moved afterwards west of the river on combinations or interbilling.

205 Traffic covered by item 351, showing a total of 133,860,700 pounds of stone, originated in Louisiana and was delivered in Louisiana. I cannot name any point in Louisiana east of the river where stone is produced. The billing would show where the stone originated. I don't recall examining the billing. I cannot say where the tonnage of stone originated. We examined the records and only included shipments which originated in Louisiana and were delivered in Louisiana either by the Illinois Central and the Y. & M. V. I am not a rate man and cannot testify as to through rates on either sand, gravel, or broken stone between east and west of the river. The revenue shown in the exhibit is that reported on the waybills and is the total revenue collected as freight charges and is not merely the Illinois Central's portion. The statement makes no separation between interline and local traffic. I have with me no figure to show the proportion of interline traffic, or of the proportion of the actual revenue collected, according to the Illinois Central. If a portion of the transportation included be transportation west of the river and also east of the river, it would not reflect the actual results so far as the revenue to the Illinois Central is concerned, and that would be true as to all commodities covered by exhibit 15.

Included in the statement is traffic over two lines in Louisiana. They run from Lorraine, La., to Vicksburg, Miss., and from the Mississippi State line to New Orleans, the latter known as the Y. & M. V., from the Mississippi State line to New Orleans, known as the I. C., and from Baton Rouge to Covington, La. Exhibit 15 does not include any tonnage moving between points on the Y. & M. V. between Vicksburg and Shreveport and points on our lines east of the Mississippi; we have only included intrastate traffic.

206 (Counsel appearing for the Illinois Central System here stated for the record that exhibit 16 is substantially similar to an exhibit filed before the Louisiana Commission brought up to date.)

I have no statement or figures from which I could give for the record the result of the Illinois Central System operations east of the river for the first three months of 1932. The figures stated in ex-

hibit 17 are the actual figures reported to the Interstate Commerce Commission. I have not prepared anything to show what would be the result if I applied surcharges to the 1932 Louisiana intrastate traffic. It appears from the exhibits that since the Illinois Central System got advances from the Interstate Commerce Commission it is considerably worse off than before the surcharges were allowed. Its earnings have gradually declined. This I attribute to decrease in business.

I am not familiar with truck competition along the Louisiana line. The figures shown in exhibit 18 are those for the entire Illinois Central System, including Y. & M. V. between Vicksburg and Shreveport and the Gulf & Ship Island. Where I say Illinois Central the figures are taken from the general report of the company, including all branch lines and all lines operated.

In item 640, fertilizer, showing in round figures a movement of approximately 19,000 tons, a shipment moving from New Orleans to Monroe via Vicksburg, Miss., would not be included, since the shipment in question would be an interstate shipment and eliminated in making up the report. This is true as to everything shown in the exhibit. Group 152, vegetables, dried, n.o.s., on exhibit 15, is a description of commodities excepted by the order of the Louisi-
207 ana Public Service Commission according to order 897. Group 154, products of agriculture, n.o.s., takes in bagasse and beans if there were any, peas, Australian or cow peas. The last two variety of peas are listed in order 897 of the Louisiana Commission; I don't know that they are excepted from surcharge on interstate traffic.

Redirect examination

In working up my exhibits I took the specific commodities excepted by the Louisiana Commission. That was the guide that controlled the work in preparing the statement, and then I turned to the Interstate Commerce Commission classification and for the purpose of this exhibit I grouped those commodities that were excepted under the totals appearing in the Interstate Commerce Commission classification. For example, I have 164, products of agriculture, n.o.s.; that includes bagasse, cow peas, sugarcane, soya beans and any other commodities excepted by the Louisiana Commission in its order which comes within that general designation, 164, products of agriculture, n.o.s., on which the Interstate Commerce Commission allowed an emergency rate. I have not included anything else beside those.

As to group 420, pulpwood, we arrived at the difference between actual revenue and revenue plus emergency charge by determining the movements that were intrastate in Louisiana and furnishing the data to our rate department, which added the rate for the emergency, and after having furnished those rates we calculated the amount of the emergency charge. I don't know whether the rate used was upon pulpwood or per cord. In addition to eliminating interstate traffic

we also eliminated import traffic in making up the exhibits. A shipment of stone, gravel, or sand originating east of the Mississippi on the Illinois Central and moving to a point on the T. & P. or the Southern Pacific west of the river would not be reflected in the
208 statement. A shipment of stone or sand originating west of the river on the T. & P. or Southern Pacific and moving to a destination on the Illinois Central west of the river or east of the river instrastate would be reflected in the statement.

(Counsel for carriers offered in evidence a sample copy of a master tariff of the emergency charge, together with supplement 1 and supplement A and B, said tariff covering charges on interstate traffic throughout the country, it being the desire of the carriers to have the same increases applied on intrastate traffic in Louisiana and no different. The effective date of the tariff is April 4, 1932.)

(Tariff received in evidence as carriers' exhibit no. 19.)

(Counsel for carriers further offered in evidence a consolidated statement which is a duplication of what was offered before the Louisiana Commission, showing as to each road the Interstate Commerce Commission figures covering operating revenues and expenses, net revenue, taxes, income, etc., for the calendar years 1929–1930 and 10 or 11 months in 1931. The period covered by the statement was all prior to the wage reductions.)

(Statement received in evidence as carriers' exhibit no. 20.)

209 BROWN MCCULLOUGH, called by counsel for Meriwether Sand & Gravel Company, Lewisville, Ark., et al., testified:

I am manager for the Reader Gravel Company, Reader, Ark., engaged in the business of producing washed sand and gravel. Fifty percent of our shipments from Reader, Ark., have for the last two years been destined to points in the State of Louisiana. For the three months prior to January 4, 1932, the effective date of the emergency increase, we shipped into Louisiana 370 cars. For three months after the increase went into effect we shipped three cars. The difference was in part due, probably, to the slowing down of contractors' work for the Louisiana Highway Commission. However, on January 4th we had Louisiana contracts partly completed, and there was material due on these contracts, and the contractors when they ordered us to start shipping again after January 4th raised the question of the 6-cent emergency increase; we were not able to stand the 6 cents, and the contractors said they could buy it within the State and save the 6 cents, and I told him that if that was true I would be glad to abrogate our contracts, and that was done in the case of N. V. Duncan & Company. Their job was at Mansfield, La. I understand the contractor purchased the remaining material from a Louisiana pit on account of this increase. As other causes for the reduction in volume of shipments of gravel from Arkansas into Louisiana during the three-month period since the emergency increase went into effect, the gravel business is very competitive. There are numerous plants in southern Arkansas and northern Louisiana

trying to get business. There isn't enough business to keep them all going, and the result is that the price of gravel has gone very low, and we are practically not competing at the present time, because we cannot stand this 6 cents difference. This would keep us from
210 competing with Louisiana pits at particular points in and around Shreveport. Prior to the increase we were competing with those pits.

Cross-examination

The Reader gravel pit is located on the Reader Railroad. It is not owned by that railroad. Mansfield and Harder Lumber Company own the Reader Railroad. The ownership of the pit is in a stock company. I don't know the ownership. I have not the record with me. The pit is something like 70 miles from the Louisiana line. It is connected into Shreveport by the Missouri Pacific, the L. & A., and the Cotton Belt. The Reader Railroad only connects with the Missouri Pacific. We use the Reader Railroad, Missouri Pacific, or the Cotton Belt—L. & A. It is always a joint-line haul. I don't know the distance from the pit to Shreveport—I imagine it is 140 miles. The rate is $1.75. We are not competing at Shreveport. I don't think we have shipped into Shreveport for a year. We have shipped gravel from Merrouge north on the Missouri Pacific; to Ruston north on the Rock Island; down to Mansfield on the T. & P.; and to any of the territory in between there, Hanesville and Hummer on the Monroe & N.W. Those pits are north of the V. S. & P. The Missouri Pacific does not make any allowance for switching. The Kansas City Southern, Cotton Belt, and Reader Railroad allow their pits $4.35 *cents* a car. Our pit has received $4.35 allowance for switching only for the last three or five months. The railroad performed the switching service for us before we started getting the allowance. We either got the service performed by the railroad for us or got paid for doing it ourselves, at about cost.

I own one share of stock in the Reader Railroad; am secretary and on the board of directors. I am treasurer of the Reader
211 Gravel Company and on the board of directors. The price of gravel at our pit is anywhere from 35 to 80 cents. We produce washed and screened gravel. The variation in price depends upon competition. The price of 35 cents gets pretty close to cost of production. The competition entirely determines the price. I produce some gravel more cheaply than 35 cents. All is washed. We shipped gravel directly to Louisiana Highway Commission. I have not a memorandum of points of delivery before me. We have received orders for 40 or 50 cars at a time. I don't make delivered price. The prices are f.o.b. pits. We make delivered price to contractors at north Louisiana and do not take into allowance this $4.35 we receive from the Reader Railroad, which is for service we perform. I have forgotten just what it cost the Reader Gravel Company to perform switching service. It is in excess of $4. I think the Missouri Pacific performs the switching service for other

gravel companies, including the Arkadelphia Gravel Company at Arkadelphia. The Louisiana Highway Commission discontinued work in November or December 1931 and we shipped 150 cars or more after that to it. It went to Hummer, La., Mansfield, Camps, Hanesville, and Newellton. I don't make a less price to contractors for the Commission that I make to the Commission. For the past year our shipments for the State of Arkansas have been practically nothing, due to the financial condition of the State. Under normal conditions, when they are maintaining their highways, we ship about 50 percent to Arkansas points. About 100 miles is the maximum haul from our shipping point to Arkansas points. That is the maximum we can ship in Arkansas. Disregarding the surcharge, the same rates are applied from our plant to points in Arkansas and points in Louisiana.

212 Redirect examination

Prior to January 4, 1932, we had the same rates on a mileage basis to consuming points in Louisiana as the Louisiana points had. We have the same rates now except as to the surcharge, and if the Louisiana Commission would put this surcharge in on intrastate traffic we would now have the same rates.

213 J. S. MERIWETHER, called by counsel for Meriwether Sand & Gravel Company et al., testified:

I am president of the Meriwether Sand & Gravel Company, which has a plant located at Lewisville, on the Cotton Belt Railroad, 30 miles distant from the Louisiana State line. Our shipments from this plant in Arkansas to Louisiana points constitute about 50 percent of our shipments. The 6 cents per ton increase on sand and gravel authorized in the Fifteen Percent case has cut our price at the pits just that much. It gives the Louisiana shipper a 6 cents per ton advantage over us in relation to shipments from Arkansas to Louisiana.

Cross-examination

I have been in the sand and gravel business about 10 years operating pits at Minden and Sibley, La., and in Arkansas. I am not operating and have no interest in them now. I have a contract with a pit at Minden but don't own it. I buy gravel at a certain price and sell it wherever I can in Louisiana. I sell it for different prices on each job. On my last sale the price was 35 cents. I sell it either at the pit or delivered. For the delivered price I add the freight rate, taking into consideration only the freight rate and the price we want at the pit. I also operate a pit at Lewisville, Ark., 60.2 miles from Shreveport. Shreveport and vicinity is my principal market in Louisiana. Lewisville is on the Cotton Belt with a direct line to Shreveport. The rate is 91 cents, including 6 cents surcharge. Minden is our nearest competitor in Louisiana. I have a contract

with a pit at Minden, which is 29.7 miles from Shreveport, with a rate of 62 cents. We have about 10 other competitors in Louisiana in the Shreveport market located at Monroe and Minden. Monroe is 90 miles from Shreveport, with a $1 freight rate.

214 We own a locomotive and handle our own cars at our Lewisville pit, receiving from the Cotton Belt $4.05 a car for switching 3.2 miles. The L. & A. does the switching at the Louisiana pit. We have a locomotive at the Louisiana pit but don't perform the same operation with it that we do at Lewisville. We get no allowance for the switching at the Minden pit. The Cotton Belt absorbs the switching charge to our unloading plant at Shreveport. The T. & P. absorbs switching charges to our plant at Shreveport upon shipments from Minden. After the railroad company gets done with the switching at Minden there is no service done by the Gravel Company. We have the engine to move our cars so as to load them. In some instances we load road gravel in the pit and then spot them on the track where the railroad company can pick them up with their engine. The switching charge is allowed by the railroad companies when the gravel pit has a long haul to get those cars after loading at the plant to their track. In Arkansas we handle our own cars the same way we do in Louisiana; but the railroad company comes down a 3-mile track and gets the cars in Louisiana, and in Arkansas they don't. We carry them 3 miles, for which they pay us. The locomotive at Minden is used to switch the cars to, from and around the plant. At the Lewisville plant our locomotive switches the cars 3.2 miles to the Cotton Belt line.

Redirect examination

A cubic yard of washed gravel weighs 2,700 pounds; of road gravel, 2,800 pounds. The emergency increase of 6 cents per ton would amount to 9 cents per yard on road gravel. The man who pays the freight has to pay the surcharge too.

215 HARRY D. WILSON, called by the Louisiana Public Service Commission, testified:

I am commissioner of agriculture and immigration of the State of Louisiana. I have been connected with this department, as commissioner and otherwise, for more than 20 years, serving my fourth term as elective official, and have recently been reelected for another term of four more years. I am a practical farmer, having been engaged in agricultural operations in Louisiana for more than 30 years.

It is my belief that the proposed increase on vegetables and other commodities would be detrimental to the interests both of the growers and the carriers. Farmers generally have suffered a severe decline in earning capacity during the past two or three years, and I shall base my testimony upon the economic phases of the proposed rate

increase which will affect vegetables and general farming within the State, inasmuch as an increase is proposed on fertilizers and cottonseed meal, which latter increase will have a far-reaching effect. The use of fertilizer is absolutely essential to agricultural production in this era, and the cost of production goes up in exact proportion to the lack of yield per acre. To increase his yield per acre, the farmer must use some kind of fertilizer. There has been a decreasing amount of fertilizer used since 1929. It has been because prices of farm products have gone progressively down, and cost of production has gone up to a point where producers are unable to purchase sufficient fertilizer for the best results from his land. The records of my office show the following data relative to use and cost of fertilizer: 1928–1929, 179,153 tons, with a value (cost) of $4,934,437; 1929–1930, 185,145 tons, cost $5,184,060; 1930–1931, 96,168 tons, $2,404,200; 1931–1932, 51,180 tons, $1,177,140. Fertilizer tonnage stated for 1931–1932 is from September 1, 1931, through
216 April 18, 1932, while the fiscal fertilizer year ends the first of September, but very little fertilizer is sold between April 18th and September 1st. I think steps should be taken by everyone, including the carriers, to keep down transportation and all other costs upon fertilizer, which is beneficial to Louisiana land, regardless of how rich it is. By actual experience we have found fertilizer to be always helpful to any crop planted in any land. In 1931 a large crop of cotton was produced with a smaller use of fertilizer than in the preceding year, because the drought of 1930 extended over the almost entire growing season of cotton and other commodities. That year we used 185,000 tons. The next year we used only 100,000 tons. All the fertilizer put in the ground before remained dormant. The two applications of 1930 and 1931 gave the successful result. This year I believe we will see a very small yield on lands not receiving any fertilizer this year. None of it now remains in the ground from the previous season. Lack of funds on the part of the farmer is the cause of reduction in tons of fertilizer used in 1931–1932 season. If the Government had not loaned the farmer money to buy fertilizer, the 51,000 tons would be cut two thirds, I think.

The average prices paid for cottonseed are as follows: For the season of 1928–1929, $37 a ton; 1929–1930, $55.59; 1930–1931, $24.76; 1931–1932, $10.25. The trend does not indicate that the 1932–1933 prices will be any better. The $10.25 above stated was the price delivered at the mill. The farmers got around $6 or $7. The seed did not pay for the ginning, bagging, and ties. In many instances we had to pay 40 cents to $1 extra for ginning, bagging, and ties.

The farmer conducted his operation during the past season at
217 an absolute loss. The average price of cottonseed meal and hulls that the mills received delivered was, in 1928–1929, $43.01; 1929–1930, $39.58; 1930–1931, $29.41; 1931–1932, $15.99. In 1928–1929 the hulls were $9.32; 1929–1930, $9.66; 1930–1931, $8.142;

1931–1932, $3.52. Cottonseed meal and hulls are used principally in Louisiana for feeding dairy cattle. Dairy products today are cheaper than I have ever know them. I can show you a sale of milk about 70 miles from New Orleans at about 6 cents a gallon. As to seed crushed in Louisiana, in 1926–1927 there were 230,081 tons, 1927–1928, 165,311 tons; 1928–1929, 204,299 tons; 1929–1930, 232,682 tons; 1930–1931, 202,909 tons; total 1,035,282 tons. The price of seed was so low for the past season that many farmers used them for fertilizer, cow feed, or anything around the place. I don't think an increase in freight rates would create any more movements. The farmers pay the freight. Prices of cottonseed products are fixed on a basis of cost of the raw cottonseed, plus hauling and manufacturing costs, including freight paid to rail lines. Products of cottonseed covered by the proposed increase are sold on a basis of a delivered price.

Many tons of fresh vegetables are shipped to local markets by Louisiana farmers each year. Until recently this enormous tonnage was all handled by the rail lines operating in Louisiana. The gross amount of fresh vegetables produced in Louisiana for local markets has not decreased. A reduction in the volume of such traffic over railroad lines is attributable to shipments by truck lines and privately operated highway vehicles. I believe that an increase in rates at this time will not only fail to produce an increase in the operating earnings of a railroad but will tend to result in disorderly and indiscriminating marketing of perishable products.

218 Many farmers have a small acreage devoted to pulpwood and by selling a few tons would be helped out greatly, through receiving a little additional cash. There are several large pulp mills operating steadily in Louisiana. I have met trucks on the road in the last six or seven months hauling pulpwood. Cottonseed, cottonseed cake and meal, and cottonseed products are being moved by truck in Louisiana.

Cross-examination

The price of cottonseed itself would be affected by the proposed increase in rates by the additional charges on the commodities out of the cottonseed. There has been a steady increase in the production of fresh vegetables in Louisiana for the past 20 years, and a very marked increase as to all commodities for the last four or five years. Today there is a market for vegetables in every town in the whole country brought about by changed conditions. Vegetables generally are shipped wherever the farmer will get the most money for them. Strawberries are mostly shipped out of the State, usually moving by express. After home consumption has been supplied, other vegetables are to a considerable extent shipped to distant markets outside of Louisiana. The situation in agriculture generally is about the same in Mississippi and Texas as in Louisiana.

Redirect examination

Sweetpotatoes are grown extensively in Louisiana. I have never heard of nitrate of soda being used for anything except fertilizer in Louisiana.

219 GEORGE H. HARMOUNT, called by Louisiana Public Service Commission, testified:

I have been with the Louisiana Farm Bureau Selling Exchange since 1923 and president for the last six years; with the Terrebonne Farm Bureau since 1923 and president for eight years; with the Louisiana Farm Bureau Federation since 1923 and member of its executive committee for four years. From 1919 to 1930 I was in Louisiana as secretary and treasurer of the Grant Smith & Company interests' farming operations near Raceland. Since 1930 have been operating for the Louisiana Farm Bureau an exchange, and myself as a grower and shipper.

I have made a study of agricultural conditions in Louisiana for the purpose of efficiently carrying on my work. I concur with the Commissioner of Agriculture (Mr. Wilson) with regard to the fruit and vegetable situation in Louisiana. Anything I would have to say would be cumulative and corroborative of what he said.

220 H. B. HENDERLITE, called by Louisiana Public Service Commission, testified:

I am State highway engineer of Louisiana and have held that position for approximately three years. I have had about ten years previous experience in construction work. I have charge of all the construction and maintenance.

(Counsel presented map showing Louisiana highway system.)

(Map received in evidence as shippers' exhibit no. 21, witness Henderlite.)

As highway engineer I have jurisdiction and supervision over the entire construction program of the Louisiana Highway Commission, as well as the maintenance of highways already constructed. We have been engaged for the past three years in a very large program of highway and bridge construction involving an expenditure of approximately $100,000,000, a considerable portion of which is yet to be consummated. We are at this time held up by financial difficulties occasioned by inability to market our securities and, pending our proceeding further with our construction program, our primary concern is the maintenance of roads already constructed. Our highway system at this time totals about 17,000 miles, 2,300 miles of which are paved or hard surfaced, 10,992 miles paved, hard surfaced, or otherwise improved and under maintenance, and the balance unimproved. We expect to begin maintenance of approximately 3,000 additional miles at the expiration of the present year, which will then bring our total mileage maintained to approximately 14,000 miles. To properly maintain such highways requires an average of three to five cars of gravel per mile per year, there-

fore our immediate requirements of these commodities will run from 30,000 to 60,000 cars per year. Highway commodities have heretofore moved principally by rail; but because of increases in
221 freight rates and the cessation of construction releasing numerous trucks, on the basis of any further increases in freight rates we will be forced to use trucks and barges to a much greater extent than formerly. During the period of construction the use of trucks was limited on account of new unsettled and unimproved roads, but with the construction work largely completed the use of trucks is more feasible and will supplant or shorten the rail haul. This will enable us to provide employment for a greater number of unemployed people in the State and the possible reinstatement of former employees.

The map, exhibit 21, shows the Louisiana roads which have been paved, as well as those graveled. Practically every railroad in the State is paralleled with a completed highway either paved or gravel. These improved highways reach points close to the gravel pits, the location of which are shown on the map which I have here.

(Said map received in evidence, marked "Shipper's Exhibit No. 22", witness Henderlite.)

There has been an increase in the use of trucks for hauling gravel from the pits since the highways have been constructed. Barges could be used generally over the southern part of the State, since it is pretty well honeycombed with navigable streams and lakes. Since gravel rates were increased the highway commission has increased its use of barges. They handle shell principally, but quite a bit of gravel, too. It is the intention of the highway commission to increase those shipments via barges and trucks in case further increases in rates are made. We have a number of idle trucks on hand which can be placed into service.

Cross-examination

Barges have occasionally been used for gravel from around the Ponchartrain district. That use isn't intensive at the pres-
222 ent time. They are used on both construction and maintenance work. I imagine that at least 300 trucks would be available for movement of repair materials. Our trucks range from half a ton to three tons capacity, mostly of the larger size. Heretofore trucks used in maintenance work have hauled material from the nearest switch to place of use; occasionally we haul from pits; ordinarily not over ten miles. At the present time our fleet of 300 trucks is about right for maintenance purposes. It would not at the present time be necessary for us to acquire a considerably larger number of trucks should we embark in a policy of substituting trucks for rail service.

The amount of sand and gravel purchased by the highway commission outside the State for maintenance purpose is rather small. It is only in case of new construction that the purchase is outside. Such construction is done upon competitive bidding, and some con-

tractors on projects along the northern border get gravel from Arkansas, but not many of them. I don't think there are any pits in Mississippi that we get gravel from. We have not deliberately undertaken to do line-haul trucking of road materials in view of the rising rates. In quite a few cases we have done it, but not as a fixed policy, as we intend to do if the rates go up. We could with success use trucks in hauling crushed stone from Winfield to the different points in the State where it is used on different projects. I can't say just how far it would be practicable to haul such stone from Winfield. We use practically all the stone from the quarry at Winfield under a contract for a million tons, of which we have already used 800,000. The remainder of that order is only 200,000 tons, but that stone is so valuable it is likely that the quarry will continue indefinitely. In numerous instances crushed stone is shipped a considerable distance from Winfield. We have
223 shipped it as far down as Abbeville, around 150 to 175 miles.
We wouldn't undertake to haul it in trucks that far unless we could make a reasonable number of trips a day.

Redirect examination

The average haul of gravel by truck at the present time is from 1 to 10 miles. There is a truck haul on every carload of gravel, crushed stone, shells, or sand purchased by the highway commission and used in road construction or maintenance in Louisiana. It is feasible to increase the distance of truck haul without putting into use additional trucks. By increasing the truck haul we would reduce the rail haul, and such is our purpose if the advance goes into effect. We would also put in additional trucks and haul from the pits as well as from rail stations. Gravel pits are pretty well distributed in Louisiana east of the river and are centralized west of the river. I consider that we can profitably use trucks for hauling gravel for at least 25 miles from each of the centers of production, which would be increasing the present mileage about 2½ times and reducing the rail haul about 15 miles.

I have prepared from the records of the highway commission a statement showing uncompleted construction projects as of April 1, 1932.

(Said statement received in evidence as shippers' exhibit no. 23, witness Henderlite.)

Exhibit 23 includes all outstanding uncompleted contracts of the highway commission for construction work in the State. A little work is being done now, principally Federal-aid work, on money coming from the Federal Government, the State having no money to complete these projects at the present time. Whether they would have money within a year depends upon whether they sell the bonds,
and, if they don't upon whether the legislature could raise the
224 money. Approximately nineteen million dollars are required.
The contracts referred to in exhibit 23 would not complete the highway system of the State; there would still be additional con-

fract work. In this list all of these are active contracts. Contract price includes the placing of gravel or crushed stone or other aggregates in the completed road. It includes the freight rate. Any increase in the freight rate would necessitate the Commission having to pay the additional freight. The State having no money, any additional burden on the work would further defer the construction. It is possible to use trucks in delivering the materials used in these contracts. Trucks are used for that purpose, and such use may be increased and I think it would be. Trucks can now be secured in the State of Louisiana upon private contract at very low rates, many being owned by farmers and unemployed people, whose trucks can be hired for much less than the actual cost of hauling. Any increase in rates would increase the use of private trucks. What I have said about the use of trucks in this construction work would to a certain degree apply to the use of barges. Of course, a barge is a different proposition, because its use is restricted. There are, however, certain projects available to barge transportation along the navigable streams of the State or pretty close to them.

(Counsel for shippers offered in evidence order of the Louisiana Public Service Commission no. 928, effective June 1, 1932, stating that it allowed carriers east of the Mississippi River to increase their rates to the level of interstate rates.)

(Copy of order received in evidence as carriers' exhibit no. 24, witness Henderlite.)

Examining appendix A to Louisiana Commission order, exhibit 24, I can state that those are the same contracts east of the river which are shown in my exhibit 23 under the heading "East of
225 the Mississippi River." The Louisiana Public Service Commission exempted from the increased rates the movement of gravel and other materials used in those contracts. If those increases should go into effect upon the sand and gravel covered by the contracts listed in exhibit 23, the Louisiana Highway Commission would have to stand the increase. The volume, origin, destination, and length of haul with respect to the movement of gravel varies considerably from year to year and as the projects are completed in part or in whole. What happened in 1931, 1930, or previous years is no standard as to what may happen in 1932–1933 in road construction. The highway commission is in a position to change that movement itself in the manner indicated by me.

Recross examination

The operating cost of three-ton trucks per mile would depend upon the distance of the haul. Short hauls are fairly expensive. In longer hauls it amounts to about 6 cents per ton mile, or 18 cents a mile for three tons. This cumulation of cost considers depreciation at 5 cents a mile. According to my figure it will cost $1.98 to haul three tons ten miles. The order of the Louisiana Commission (ex-

hibit 24) excepts material for project locations but not for maintenance. I don't know what percent of the gravel covered by my exhibit 23 is used west of the river but originates east of the river. There has been a very substantial movement of maintenance gravel from the east to the west side of the river, and those distances are quite substantial.

Redirect Examination

The use of the trucks to the extent indicated by me west of the river would have some appreciable effect upon the movement of gravel from east to west of the river. You would reduce your cost per ton mile by putting a trailer on your truck or using a truck train tractor. Such trains can be operated over Louisiana
226 roads. There is an unloading charge in every case where the highway commission has a shipment by rail. This has to be paid whether the haul is one or ten miles. The figures as to cost of truck transportation do not include the unloading charge. Your ton-mile cost of truck hauls decreases as the distance increases up to 25 miles. That is one reason why you cannot compare it directly with your railroad haul, because when you haul by railroad, when you get to your short-haul bracket that brings the cost per ton down. The cost of hauling three tons ten miles by truck would be $1.86, but for a shorter distance it would be more.

227 HARRY B. NELSON, called by shippers, testified:

I am a paving contractor and have done extensive work in the State of Louisiana for the highway commission, having laid about 250 miles of paving all over the State, both east and west of the river. I supply the material under the paving contracts, making a bid for the material in place in the job. In figuring the price in place, I figure the transportation charges. The materials used are sand, gravel, and cement for the most part, some crushed stone and some shells. Supplies of sand, gravel, and crushed stone I get east of the river, from the section around Amite, on the Illinois Central, and west of the river from Alexandria, Monroe, and Minden.

With respect to the situation east of the river we had the first paving job east of the river at the time we started. We then had a truck haul on all the materials used, contracting the hauling out to other truck owners. The average haul was about 4½ miles, some of the material coming direct from the pit. There are pits all along the Illinois Central east of the river. Today we are hauling 13 miles from a pit east of the river, a longer haul than we could have obtained during the early construction period and farther than we have been hauling by truck on account of the reduced price per ton-mile. The increased haul by truck is attributable very largely, west of the river, to the completion of better roads. West of the river we haul 22 miles. East of the river the haul is not so long, being controlled by the location of the job with relation to the pits. We have used trucks west of the river from the pit and from railroad set-ups.

We have found it feasible to use trucks in competition with railroads and shorten or cut out a joint haul and use a single-line haul.
228 That happened twice last year on two large jobs that I remember. We had a railroad set-up at Rhinehart on the L. & A. Railroad which paralleled the project all the way to Jonesville, 22 miles. We hauled the material by truck. It would have been a one-line haul and it was exactly the same distance. The truck owners quoted us a cheap price and we saved possibly $5,000 by using trucks. We had a 13-mile job over near Azucena, material for which we hauled by truck from Ferriday, because had we shipped it to Azucena we would have had a double line freight rate. We have a 19-mile job there now extending further on up from Azucena and will probably haul half the material by truck from Ferriday, because we have a paved road now that we didn't have last year. Paved roads permit us to doubly extend our truck haul. We have a project now in north Louisiana at Ruston on the Rock Island and also on the Y. & M. V. We were recently offered a rate by a responsible truck contractor to haul the material direct from the pit near Monroe, a distance of 25 miles at 90 cents a cubic yard. The rail rate would be 84 cents a cubic yard. If the railroads increase their rates any, they will be more than the rate by truck, and we will give it to the truck hauler if he saves us some money. Truck transportation can take place at substantially every point in western Louisiana where there is a contract. There are possibly five to seven thousand idle trucks in this State, and it is not so much a question of whether the truck can haul it cheaper than the railroad, but a question of getting a man a job. A man with a truck will take a job today to make a living wage for himself. I can get 5,000 trucks in a week's time. If this surcharge is put on west of the river or all over the State of Louisiana, contractors will cut out the rail haul in practically all cases, because the pits are scattered so widely it would be possible to haul direct from the pit to the job. I can remember a few jobs put in last year where they hauled direct from the
229 pit by truck. It was over south of Alexandria around Church Point, Eunice, Crowley, between there and Bunkie. The roads in that section are all practically connected up. The completion of a road extends the use of trucks just that much. We can now haul by truck three or four times farther than we dreamed of hauling four years ago. I have uncompleted contracts with the highway commission for about 75 miles not yet put in. The work has not been stopped on that contract. We are starting up again. The job in north Louisiana at Ruston will start within the next 60 days and a reliable truck man has offered to haul that stuff for 90 cents a yard. The freight rate is 84 cents a yard, which if raised will cause us to haul by truck, although we would rather see the railroads get it. We don't believe in wearing out highways with trucks. We could deliver that gravel at Ruston. If delivered on the Rock Island it

would be a joint-line haul and the rate would be higher than 62 cents. There are approximately 65,000 tons required for that work.

Cross-examination

In constructing roads the general practice is, generally speaking, to get gravel from the nearest pits. We get bids on gravel and take the lowest. I can translate that "generally speaking" into something more accurate. In Louisiana the pits are bunched. Up on the I.C. there are five pits within two miles of each other. Sometimes they don't all have the same price. In such case a mile extra truck haul at a little reduced price or at the same price, the further pit is used. The map put in evidence by Mr. Henderlite may not be complete as to pits because we put in our own pits where there is a gravel deposit. We are doing that today at two localities. With respect to the contract for work near Monroe, we have not closed on the truck offer. If there is a raise in rail rates of 6 cents a
230 ton, it would be 9 cents a cubic yard increase, aggregating more than 92 cents a cubic yard. The distance is 25 miles between Watts and Ruston. Out of some 25 jobs we have put in Louisiana, materials for two have been furnished from Arkansas. They were on highway 80, between Ruston and Monroe, about 30 miles from the State line. The pits in Arkansas were about the same distance or a little farther from the State line. There were some pits within 12 miles of the particular projects, but trucks from these pits would have gone over mud roads and the haul would have been impossible. We don't own the trucks we use because we can contract for them cheaper today. We buy gravel both delivered at the pit and at the project. They quote you a delivered price, but when you pay for it you pay for the pit price. We pay the transportation cost. We have never crossed the river with any gravel since we have been operating in Louisiana.

Redirect examination

On the job, when we got gravel from Arkansas, the pits in northern Louisiana had a very high price at the time on both sand and gravel. The Arkansas pits were trying to get in and we were able to buy in Arkansas at a very reduced price. On the Ruston job, at the time we began, it was an old dirt highway on which it was absolutely impossible to use trucks. The situation is now very materially changed in every locality of the State, and at this particular point there is 30 miles of concrete they could haul over going to this new job. The grade of gravel produced in the various pits varies some. Both A and B grades are used in concrete construction. Grade B gravel is smaller and you have to use some cement. The contract prescribes the kind you must use. Just a few pits produce grade A. Some produce only B and some A and B. This fact has something to do with determining where we get our supplies. What

I have just said applies only west of the river. There is very little grade A gravel produced east of the river.

231 C. W. MOFFATT, called by shippers, testified:

I am traffic representative for the Parker Gravel Company and Monroe Sand & Gravel Company, producing clay, gravel, road gravel, washed gravel, and sand. The Parker Company's pits are located at Watts on the Y. & M. V., Freda on the Missouri Pacific, and Ogden on the L. & A. The Monroe Company's pits are at Stevens on the Y. & M. V. All those pits are in northern Louisiana west of the river. At these various pits the industries perform all of the switching and get no pay for it. There is no allowance made for any switching performed by the industry with its own equipment. The railroads themselves perform no switching for these industries. The switching equipment at the Parker Gravel Company is four locomotives at Watts and one each at Ogden and Freda. The Monroe Company has three locomotives at Stevens. I have endeavored to get the carrier to absorb the Parker Gravel Company's switching at Shreveport on gravel and sand from Ogden. At the time Meriwether was receiving allowance or absorption for switching on interstate shipments to Shreveport. I have not been successful so far in getting carriers to allow or absorb switching. Conditions are similar at points named. Lewisville is on a competitive basis because the traffic moves through Texarkana in connection with the K. C. S. From Ogden the traffic could move through Sibley in connection with the Y. & M. V. We think the conditions are similar and that absorption should be made on Ogden. I know nothing about the prices which are quoted by the Reader pit in north Louisiana except that they were unusually low. I haven't any exact figures. I make deliveries myself by truck only to Monroe, about 6 miles, using our own trucks. The Parker Gravel Company operates a retail selling department, the Twin City Gravel Company, and they make all Monroe deliveries. Neither the Parker nor the Monroe companies make any deliveries to contractors
232 with their own trucks. The prices for gravel are made f.o.b. pit for delivery in addition, except deliveries in Monroe proper and West Monroe. The Arkansas Commission has established in the State of Arkansas an allowance at all pits in that State for the service performed by the gravel company and has issued a general order dated February 4, 1931, in case 797.

(Copy of said order received in evidence as shippers' exhibit no. 25, witness Moffatt.)

The order referred to establishes a switching charge of $2.50 per car as an allowance for delivering empty cars to the gravel pits only to the Missouri Pacific Railroad. The other lines were making allowance and the Missouri Pacific had refused to make the allowance, so the Commission initiated this proceeding and entered the order after hearing. Drew & Hunter are regularly hauling gravel into Shreveport from a pit near Minden, 33 and 34 miles, price of $1 per yard on a basis upon which the rail rate would be $1.02 per

yard. More than 25,000 yards was so delivered by truck. They offered it delivered at Shreveport for $1 per yard.

Cross-examination

The Reader Railroad was getting a division of the freight from the Missouri Pacific. I understand the Reader Gravel Company and the Reader Railroad are two separate concerns with a common ownership. When I refer to this division I meant a division between the Missouri Pacific and the Reader Railroad as two common carriers. The pit of the Parker Gravel Company at Watts is 7,585 feet from the main line of the carrier. My reference to switching by the Parker Gravel Company at the Watts pit includes all switching interplant and intraplant. They take the empties from the interchange connection and sort and shift them on the interchange,
233 sometimes having to switch the empties from behind the loads then move the cars down to the loading tipple and after loading they take them back and deliver to the railroad on the interchange connection for outbound movement. I was not trying to get the L. & A. railroad to pay the Parker Gravel Company for intraplant switching. The loading tipple of the Parker Gravel Company at Freda is 5.740 feet from the interchange track, at Ogden, 6,240 feet, and at the Stevens plant of the Monroe Company no. 1 tipple is 5,824 feet, no. 2 sand tipple is 5,939 feet, and no. 3, 6,176 feet. Their pit run, that is, the clay bank gravel, is 10,943 feet from the interchange track. I have never been to the pit of the Meriwether Company at Lewisville and am not familiar with the physical facts in connection therewith. I have never examined the plant of the Producers Sand & Gravel Company.

The traffic movement would make a difference of either $3.60 or $4.90 in the switching allowance. I don't recall what they absorb to make these deliveries. The switching charge within the city of Shreveport is not absorbed by the Y. & M. V. or L. & A. on traffic originating at local points, such as Watts, Ogden, and Stevens. The T. & P. and K. C. S. would not be interested in absorbing switching charges there because they are the receiving line, and the delivering line has to make the absorption. Where the shipment originated makes a difference, to the extent if the delivering line doesn't absorb it the shipper or the gravel pit has to pay it; it adds that much to the price. To my knowledge there has as yet been no suit filed by the Gravel Company in the courts of Louisiana to recover the allowance.

(Counsel for the carriers asked that carriers' exhibit no. 8, witness Schmidt, be corrected by changing the figure of 304 tons for the item of blackstrap molasses in the exhibit to 2,304 tons.)

234 J. E. JUBAN, called by counsel for Meriwether Sand & Gravel Company et al., testified:

I am secretary-treasurer of the Producers Sand & Gravel Company, with main offices at Shreveport and plant at Wilton, Ark., on the

K. C. S. Railroad, possibly 30 miles from the Louisiana State line. I bid for Producers Sand & Gravel Company on maintenance material for the Louisiana Highway Department. Of my own knowledge I know that Meriwether Sand & Gravel Company, Reader Gravel Company, Standard Gravel Company, and the Tennessee-Arkansas Sand & Gravel Company, all companies from Arkansas, bid on maintenance material for the Louisiana Highway Commission. We get a mimeographed copy from the highway, showing each and every bidder and price. I have been awarded the contract for furnishing maintenance material when my bid is low. It is my knowledge that the low bidder gets the contract. I have furnished the Louisiana Highway Commission with maintenance materials from our pit at Wilton, Ark.

Cross-examination

We get $4.05 at the Arkansas pit.

235. O. C. STEIN, called by carriers, testified:

I am general freight agent with the Illinois Central. I have been for three months, theretofore having been assistant general freight agent for two years.

The basis of the rates on sand and gravel and crushed stone applying on interstate traffic on the Illinois Central, east of the Mississippi River in the Mississippi Valley, is the so-called Georgia scale or the 15715 basis of the Interstate Commerce Commission. That was a scale approved by the Interstate Commerce Commission for interstate application in the Mississippi Valley in I. & S. 3250 and applies in Mississippi and Louisiana and on interstate traffic on all lines in the Mississippi Valley. The Illinois Central has made a study of interstate movement of sand and gravel from Mississippi into Louisiana for the months of April, May, June, July, August, and September, 1930. The volume was 11,967,600 pounds of sand and gravel. The gravel originated at Brookhaven and Gravel Pit, Miss. The movement was in the aforesaid period in 1930, when the Georgia scale had not been applied. It took effect March 1, 1931. The emergency increased rates now apply to the interstate basis of rates in the Mississippi Valley, including any movements from Mississippi into Louisiana. The shipments included in the study I have referred to move to points on the Illinois Central as well as the Y. & M. V. The lines of the Illinois Central System extend continuously from New Orleans through Hammond on the north, and Baton Rouge on the northwest, into Mississippi. There is no separation or segregation of traffic at the State line. The trains are not broken up when they get to the State line. The shipments referred to in the statement moved out in continuous movement from these points of origin to destinations in Louisiana. I am in touch with the movement of traffic on the Illinois Central System
236 from the territory in Mississippi and Louisiana. I don't think the rail movement would be substantially affected if this

emergency charge is applied. Based upon my experience, I think there would be an increase of revenue as a whole received from these commodities. The Illinois Central has never been called upon to reduce any of the interstate rates on sand and gravel in the territory east of the river in Mississippi or Louisiana because of truck competition, and it has never made any such reduction that I know of. The basis of rates at the present time in effect, the Georgia scale, applies uniformly in this territory on interstate traffic.

Cross-examination

My testimony on direct examination was with reference solely to interstate traffic. The Georgia scale does not apply to intrastate traffic within the State of Mississippi. I don't know the basis of rates within Mississippi. I know that the Louisiana Public Service Commisson has recently granted the Illinois Central an increase in intrastate rates east of the Mississippi River up to the basis of the Georgia scale on the 17,000 scale, which is practically the same. These increases are effective June 1st, with certain exceptions. I don't know the percentage of advance over the present rates. My duties as general freight agent are to handle rates and solicitation. I don't know anything about the rates on the Illinois Central on gravel in Mississippi. My territory is south of Jackson, Miss. I don't know what are the rates in effect south of Jackson, Miss., on sand and gravel intrastate. I don't know anything about the Mississippi rate situation. It is not handled in my office. I have jurisdiction over rates except Mississippi intrastate rates, over which Mr. J. R. McLeod, of Memphis, Tenn., has jurisdiction. I have jurisdiction over Louisiana intrastate rates. I have not checked
237 the percentage of the increase authorized by the Louisiana Commission effective June 1st. The Illinois Central Railroad is not operating any motor truck transport companies east of the Mississippi River and is not contemplating such operation that I know of. I am not giving serious consideration at this time to the operation of motor trucks in connection with the railroad. I don't know about the management doing so. In an indirect way we are giving the consideration to the inauguration of a coordinated rail and motor service by which to make delivery by truck. There is nothing definite. We are just considering it. We are making store-door delivery on less-carload freight today in Louisiana. This was done to meet truck competition, which we still have. I don't know whether it is as extensive as it was before we inaugurated our service, which was October 10, 1931. We make no extra charge to shippers for this extra service of delivering by truck. Wherever we have contracts for making such delivery the rail rate delivers the less-carload freight at the store door, that is, wherever our tariff indicates we have such delivery; we don't have that delivery at every station. I understand there is combined boat and

truck competition at Wadesboro and we might meet that competition by making store-door delivery under this arrangement I just described. So far as I know we have not reduced any intrastate rates in the State of Louisiana to meet truck competition on l.c.l. freight at any point on the Illinois Central and Y. & M. V. We have reduced rates on carload freight. We put in some rates on sugar with a limit of 10,000 pounds from New Orléans to points in Louisiana on our railroad, effective April 4, 1932. I can't say how much the reduction was. I don't know what the rates were before. I think we applied to the Louisiana Public Service Commission for authority for a rate of 2¾ cents a hundred pounds on gravel, carloads, minimum 50,000 pounds, to be used in the construc-
238 tion of good roads from Roseland to Montpelier, Pine Grove, and Grangeville, La. I don't remember when that rate expired nor about any extension thereof. On looking at papers supplied by counsel for shippers I recognize them as the authority which grants the extension.

(Copy of authority of Louisiana Public Service Commission, dated September 11, 1931, No. 4419–R, being authority for reduced rate on gravel, carloads, from Roseland on the Illinois Central Railroad to Montpelier, Pine Grove, and Grangeville, La., together with amendment no. 1 to said authority, extending the expiration date until July 1, 1932, received in evidence as carriers' exhibit no. 26, witness Stein.)

I am not in a position to answer why this reduction was made. As I recall it, I filed the application, but the request to do so and the circumstances in connection with the movement were developed by our Memphis office at the time this arrangement of ours was on a different plane than it is now, and I am not in position to answer about the details. I don't know how far the Brookhaven gravel pit is from the main line of the Illinois Central; it is some distance off. I don't make the rates from Brookhaven to New Orleans. They were made by the Interstate Commerce Commission in docket 17517 before I had any jurisdiction. Some of our operating people, say, Mr. Quigley, living in New Orleans would know whether we go in there and switch for the gravel pit. When I testified as to the movement to New Orleans I had information gotten up by the accounting department and testified on information from that departments. Our records show the movement. Our auditing office furnished it to me.

(Counsel for the Illinois Central Railroad states for the record that the Illinois Central makes no switching allowances such
239 as are required to be furnished and supplied in tariffs under section 15 to any quarry or gravel company east of the Mississippi River. We do switching service at all the plants. I will undertake to furnish a statement showing the distance and whether we perform the service to and from the interchange track.)

We have a gravel pit at McKenzie, La., on the Y. & M. V. I don't know how far it is from the main line, nor whether on a spur or

switch track. There is a concrete highway along the Illinois Central in Louisiana. I think motor-truck competition has increased since that was made a concrete highway. Competition is substantial today, but not as much as it was before. The highway leads into New Orleans, and there are also completed hard-surfaced highways leading from Illinois Central points to Baton Rouge, paralleling a branch of the Illinois Central. There is also a completed highway paralleling the Y. & M. V. system for its entire length between Baton Rouge and New Orleans. I don't know about above Baton Rouge.

The rates embraced in docket 17517 were mileage rates. That scale generally applies in the so-called southeast or Mississippi Valley territory. I have no knowledge of the Illinois Central or Y. & M. V. ever departing from the actual application of that scale to and from certain points. I make the same answer with respect to other carriers operating in the same territory. Prior to the reduced rates with a minimum carload of 10,000 pounds, the minimum was 40,000 pounds. We proposed to extend this 10,000-pound minimum at reduced rates from Louisiana into Mississippi, and tariffs are on file with the Interstate Commerce Commission, effective May 23rd, and the Illinois Central and other lines have agreed to establish further reduced rates at a minimum of 40,000 pounds. Our present

240 sugar rates, State and interstate, using Mississippi as interstate, applying a 40,000-pound movement, are to be reduced in two ways; first, under a 10,000-pound minimum with a lower rate, and, second, a 40,000-pound minimum with a still lower rate.

241 W. H. STAKELUM, called by carriers, testified:

I am assistant general freight agent for the Southern Pacific Lines and have been connected with said lines for more than 20 years. My investigation would indicate that the addition of the emergency charges would increase the revenue the carriers receive from the traffic as a whole. A check of our movement record for 1931 indicates that during the year 1931 we handled from Arkansas into Louisiana 227 cars of sand and gravel, total weight 11,886 tons, and that from Texas into Louisiana during that same period we handled 396 cars, 20,856 tons. My previous answers are restricted in the application to the Southern Pacific Lines. Conditions are rather similar on other lines in Louisiana, also on other lines in the Southwest, so what would apply to us would generally apply to the other railroads.

Cross-examination

I am generally familiar with the rates and handling of the traffic of the Southern Pacific Lines in Louisiana. The Southern Pacific has established its own motor truck transport business in connection with the rail haul under authorities granted by the Louisiana Public Service Corporation. We have inaugurated the Southern Pacific Transport Company of Louisiana, Inc., operated as a pick-up and

delivery service everywhere on our lines except on the so-called H. & S. in the northwestern part of the State. The service extends within the corporate limits of the town, not in every town. I don't know the towns. It applies to certain agency stations where we have contracts with draymen to handle the business. The service was started in April of this year. I have forgotten the exact date. We established the service to combat truck competition. We applied to the Louisiana Public Service Commission for authority for
242 rates for the service which I have just described. Originally we established our regular rail rates in connection with our truck service, the first four classes. We have made changes effective yesterday, May 6th (1932). We established special commodity rates. They are the same as rail rates with no additional charge for delivery service. The rail rate now includes pick-up and delivery service. Under the transport rate we pick up a shipment at an industry or any other place of business, at New Orleans, for example, and we will bring that to our station, the transport company will, and we will transport it to some point on our line in western Louisiana, if we have a delivery service at that point, and will deliver that shipment to the consignee's place of business at no increase at any time in the rail rate. We have, within the last two or three months, since the first of this year, gotten our original authority as to these rates from the Louisiana Public Service Commission. After we were granted the surcharges on interstate traffic by the Interstate Commerce Commission, we inaugurated this transport service in Louisiana at rates which we obtained authority for from the Louisiana Public Service Commission. We have filed an application with the Louisiana Commission since our original authority was granted for lower rates than we first applied for for this transport service. I don't know the percentage of the reduction. It was something very drastic. As illustrations, we found that the truck lines in Louisiana were handling certain traffic without paying any attention to the classifications, and so we took certain mixtures, as we call them, grocery mixtures, hardware mixtures, and paint mixtures, and we asked authority from the Louisiana Public Service Commission to apply on those mixtures the 4th class rate. That is what the trucks were doing generally. So we got the authority from the Commission to apply 4th class rates on those commodities.
243 Some of those commodities take higher than 4th class. In the same application we also secured authority to apply on bags, for example, and on iron and steel articles, and on tin cans, the carload rates when the movement is traveling in less-than-carload quantities, because that is what the trucks were doing, and our investigation developed that if we wanted to handle any business we would have to meet that kind of competition.

We had not lost all the rice business to the trucks in the last two seasons, and we made a desperate effort to get back the business we had lost. I don't know the percent of the business we lost, but the

short-haul traffic has been moving very largely by truck—that competition has worried us a whole lot. Sugar moved largely by truck the last season or two and out of New Orleans has practically disappeared for the rail lines. Sterling has been shipping sugar by truck as far as Alexandria and Lake Charles. There may have been movement to Shreveport; I don't know. The truck movement very generally extends over the entire State of Louisiana on sugar and rice and other less-carload commodities; truck movement is very general. We have practically lost all of the cotton movement up to last season to the truck, or a great percentage of it. We had to put in reduced rates on cotton to meet competition. Those reduced rates brought back the tonnage to New Orleans that we expected to get, but it did not to Lake Charles. We don't operate locally any boat lines either in connection with the rail lines or independently. We have one boat connection with which we publish a few rates, but that is running up to a junction point. Boat competition along the Southern Pacific line is very keen. We meet that competition. The rates put in by the transport company were designed to meet boat competition as well as truck competition. I don't know whether the boats have applied for any increases in their rates. Our investigation develops that the truck lines and boat lines have no
244 rates. They take whatever is necessary to get the business.

All the applications have been granted that we have made. There is none pending. Well, of course, it is a question whether it would attract any business to the Southern Pacific to advance rates above those rates just put in. When we put the rates in we took the measure of the rates that were then in effect on those particular commodities involved in this proceeding. Had the emergency charge applied on intrastate traffic, it is very likely the truck lines and the boat lines, in making their rates, would have taken the full measure of the rate into consideration and have used that as the measure of the rate, and that would be the rate the transport company would be meeting and not the present rates. The actual condition that made us put in a rate which we thought proper was the existing truck competition, and if the truck lines would likewise advance their rate to the new rail rates—the rules of the Louisiana Commission are that the rates by truck would be the same as the rate by rail. If they do not increase their rates, we may lose the business. The Southern Pacific has a truck line in the State of Louisiana operating motor transport lines at rail rates or less than rail rate, and so have the T. & P., L. & A., east of the river, and the Y. & M. V. between New Orleans and Baton Rouge. I don't know that the Missouri Pacific or the Gulf Coast Lines or the K. C. S. or Rock Island or Cotton Belt offer any transport service.

The officers of the Southern Transport Company are R. C. Watkins, president, I think; H. M. Moore, vice president and general manager; Joseph Lallande, general freight agent. I believe Mr. Cun-

ningham is secretary and treasurer. Joseph Lallande is general freight agent of the Texas & New Orleans Railroad and Southern Pacific Lines.

245 In giving consideration to the rate of the transport company I made no investigation to determine whether or not there was any necessity of establishing that service between Shreveport and Loganport, La. The Shreveport-Loganport line of the Southern Pacific is not under the jurisdiction of the New Orleans office. There is quite a movement of rice by truck from Crowley. I can't say definitely whether any of it actually moved to Shreveport. I never heard of any movement of cottonseed from south Louisiana to the territory served by our company at Shreveport. I don't know of any movement of products from Shreveport to our territory. I don't know positively of any movement by truck of sugar from Sterling to Shreveport, but there may have been such movement; there have been movements to north Louisiana points. The number of commodities handled by truck in Louisiana is growing. The trucks include all of the freight they think they can handle at a profit; not being confined to cotton, rice, or sugar; they handle all kinds of freight.

Redirect examination

In the latter part of 1931 all of the lines in the Southwest established pick-up and delivery service on interstate and intrastate traffic, and originally such service was handled by the railroad company. We still have such service on the railroad. It was not cancelled when the transport was organized. All the lines in Louisiana have this pick-up and delivery service. Some of them operated by the railroads and some by special transport. The transport company is a separate corporation and publishes its own rates. They have an operating contract with the T. & P. Railroad. It is something on the order of the express business.

Bagasse is sugarcane pulp. The cane is run through heavy rollers in the sugar mill, which compresses all juices out of it, and the bagasse is the pulp residue after it comes from these rollers.

246 All the railroads put in that pick-up and delivery service at the same time in October 1931. There is no general interstate movement of sugarcane. The truck movement of sugarcane has supplanted the barge and the boat and the navigation movement to some extent, and naturally with the truck there has been a little longer haul on sugar cane than was the case when they handled it by wagon. We have no interstate movement of bagasse.

247 C. W. Brosius, called by carriers, testified:

I am General Freight Agent of the T. & P. Railroad. The paper shown me is order 929 of the Louisiana Public Service Commission dated April 30th, effective June 1, 1932, providing joint through rates on sand and gravel, shells, and related articles between points in Louisiana east of the Mississippi River and west thereof.

(Said order received in evidence as carriers' exhibit 27, witness Brosius.)

After giving consideration to the commodities involved, it is my opinion that the application of the emergency charges will result in increased revenue to the Louisiana carriers as a whole, and also to the T. & P. Railroad individually.

Cross-examination

It is not true that my last answer assumes the traffic will move to the same extent and distances and in the same volume under the surcharge rates as it moved in 1931 or previous years. My answer is based on the fact that the commodities contained in the excepted list are going to move, many of them to the same extent by rail. If we did not handle a single car of any one of these commodities, of course there would be no increased revenue. If the decrease in the movement was of such volume that the revenue or resulting loss therefrom was greater than the increased revenue that we would obtain on the surcharge—or emergency charge, if you please—why, naturally it would be less. It has been the experience of the T. & P. that there has been very little traffic that the emergency charge in and of itself was responsible for the diversion of from the rail lines. There has been a decrease in the general volume of traffic over all lines, including the T. & P. Railway in the past 24 months. The general
249 conditions throughout the country—the business depression—has naturally cut down the volume of tonnage. Since the surcharge became effective there has been an increase in certain tonnage and a decrease in other tonnage. On the whole, the traffic of the T. & P. Railway is not as great today as it was prior to the surcharge in May last year. Comparing May of last year with May of this year, the tonnage is not as great and our experience is the same as that of practically all other lines. Compare May with April, it is approximately the same; April with March, it is the same; March with February, approximately the same; February with January, approximately the same; January with December, slightly less. The surcharges have increased our revenue because the traffic we handled and the volume we have moved anyway, and the additional revenue we derived from the application of the surcharges, have naturally increased the carriers' revenue as a whole; not ours individually. There has been no increase in revenue since the surcharge went into effect. The reason for that is not the emergency charges, however, but the general conditions that are existing. I would not say that the condition is not common to all industries in the State of Louisiana which have been exempted from the surcharge, because I was told yesterday that the business of the Celotex Company has increased gradually in the last 30 days. The Celotex Company does not, to my knowledge, use trucks to a great extent in marketing their products; they use rail lines, the products, outbound, and the bagasse inbound. We are not handling any movement of Celotex now. We have

handled some less-carload shipments. I don't think the business in Louisiana today justifies a shipment of carload freight, and they are probably selling it in less-carload lots, because we have had
249 substantial less-carload shipments from the industry. There have been no carload shipments to Louisiana points on our line. There may have been on other lines. We have made some reductions in freight rates to meet truck competition. Of course, we have in Louisiana a very unfortunate situation, which is this: The Louisiana Public Service Commission issues an order which requires truck lines to apply the same rates, rules, and charges for transportation as are applicable on the same commodities when transported via the railroads. Truck lines operating in Louisiana with certificates of convenience and necessity from the Louisiana Commission disregard that. They pay no attention to it at all and assess whatever rates they feel like. We have boat competition. The boat lines assess whatever rates they feel like. In other words, they go out to get the business and will sacrifice anything to get it so long as they get enough out of it to pay the cost of handling. The combined boat and truck service, for example, boat service to Monroe and truck service to Shreveport, the situation is the same there. At the hearing before the Louisiana Commission with respect to requested reductions in sugar rates, there was a boat line in opposition, the Commercial Transportation Company, I believe. Its traffic manager testified that his rate from New Orleans to Monroe was 20 cents on sugar. On cross-examination I asked if that was a contract or an open rate and he said open to anybody. That was his published tariff rate. He said he had not secured authority from the Louisiana Public Service Commission to publish the rate. He had applied for authority but did not get it, so went ahead and published it anyway. That rate is moving the sugar today, a character of competition that is being forced upon the carriers. I do not know of any States served by the T. & P. Railway where the conditions are so bad as they are in Louisiana with respect to that character of competition. Of
250 course, we have competition in Texas, but we do have some semblance of regulation in Texas. We don't have water competition in Texas that we have in Louisiana. Unregulated competition in Louisiana includes both boats and trucks. The L. & A. Railroad recently applied to the Louisiana Public Service Commission for reduction on rates on sugar to Shreveport. The rate to Shreveport is 39 cents. The reduction asked for is 20 cents, minimum 100,000, subject to maximum load limit of the car, but not less than 90,000, and 25 cents, minimum 60,000. I did not join in that application. If the rate is established I do not think we will meet it. We can refrain from meeting the rate if it is established. Rule 55 of the Commission says we are not required to meet it. If we do not meet it the result will be that the movement of sugar will be over the L. & A. instead of the T. & P. We would not participate in the business. On shipments from New Orleans to Shreveport we

would not get any additional revenue because the movement on refined sugar today from New Orleans to Shreveport is not via rail lines. It is contemplated that the surcharge will be applied to the rate on sugar. It is a straight-out application for a specific rate with the surcharge added. The increased rate would be 22 cents to Shreveport with minimum of 100,000 pounds, 27 cents, with minimum of 60,000 pounds. Our rate would be 41 cents. We would not expect to move any traffic at all under that rate and we doubt seriously the ability of other lines to move any under the proposed rate until we get better regulation of truck and boat lines in this State.

According to the business we have handled from the Celotex Company, I would say that 98 percent of their tonnage goes to interstate points and on that traffic the surcharge is applicable. I was advised by a representative of the Celotex Company that their business
251 within the last 30 days had shown a remarkable increase. They are large exporters. I don't know the percentage of their business that moved in export traffic, but was told it was about the usual division. I think about 10 or 12 percent of their business is export. This is from figures furnished by the Celotex Company. They have furnished us such information on our own request. We publish a transit tariff on bagasse in and fibre board outbound, and in order to obtain the privileges under that transit tariff they have to furnish to us all receipts and the dispositions. The 10 or 12 percent referred to covers a period since 1921–1922, when they first started operating. Their export business has been like other business, so we were informed by the Celotex Company; it fluctuates up and down and it has been down recently, and it has shown a little improvement along with domestics. I wouldn't say definitely just what the proportion between domestic and export traffic of the Celotex Company is today. I was speaking from my past experience and the information is furnished to me by the Celotex Company. They are in a better position to answer that than I.

I have no personal knowledge of the movement of sugar by truck from South Alexandria to Shreveport. I have been told, that is all. I don't know whether rice moves by truck from Crowley to Shreveport. We are told by our representatives and from our personal investigation that clean rice is handled from the mills to Alexandria and other points in Louisiana, Monroe, and possibly Shreveport.

252 P. A. FRYE, called by the shippers, testified:

I am traffic manager of the Louisiana Highway Commission. I have had railroad experience for about 15 years prior to the time I became traffic manager with the highway commission in various railroads in Mississippi and Louisiana and am familiar with the rate adjustment in those States on sand and gravel. There has been a recent change in the adjustment east of the Mississippi River, some

very material increases prescribed on gravel and sand rates east of the river to become effective June 1st.

I have here an exhibit showing what those increases are.

(Said statement received in evidence as shippers' exhibit 28, witness Frye.)

This exhibit shows the increases which have been allowed by the Louisiana Public Service Commission in recent orders, effective June 1st, on gravel moving between points east of the Mississippi River, the average increase in cents per ton and average percentage of increase, based on mileage up to 200 miles. There are two bases of rates in effect east of the river in Louisiana at present on this commodity, one scale applying on the L. & A. Railway east of the Mississippi River and another scale on lines other than the L. & A. The common scale that has been prescribed, effective June 1st, shows an average increase in cents per ton over the present L. & A. scale east of the river of 38.3 cents and an average percentage increase over the present L. & A. scale east of the river of 59.3 cents. Now this scale shows an average increase in cents per ton over the rates in effect east of the river on lines other than the L. & A. of 25.8 cents, or an average percentage increase of 33.6 percent. Exceptions were made on outstanding uncompleted contracts in Louisiana east of the river. The carriers made no objection to excepting those contracts. The so-called 17000 scale was prescribed by the Louisi-
253 ana Public Service Commission east of the river. This is the scale prescribed by the Interstate Commerce Commission in docket 17000, part 11, sand and gravel, and applied west of the river and including east-bank points. There will be, when these rates become effective, one scale of rates applicable over the entire State of Louisiana. This was the result of substantial advances in rates and freight charges east of the river. The 17000 scale and the 17517 scale are virtually the same.

I have an exhibit in statement form showing the comparison.

(Said statement received in evidence as shippers' exhibit 29, witness Frye.)

The Mississippi Railroad Commission has not prescribed the same rates on intrastate traffic as is applied on interstate traffic between Mississippi and Louisiana. The prescribed rates are lower in Mississippi than in Louisiana. The Mississippi Commission refused to allow the surcharge to be applied on sand and gravel. The Mississippi rates and surcharges are not involved in this case. The carriers have not included the Mississippi surcharges in their application.

Cross-examination

The carriers did not affirmatively consent to the exceptions stated in the Louisiana Commission's order. They just did not object.

(Counsel for New Orleans Board of Trade presented copy of an order promulgated by the Mississippi Railroad Commission under

date of January 16, 1932, authorizing the surcharges prescribed under Ex parte 103 upon certain commodities moving in intrastate commerce between certain points in Mississippi, the order issued excepting the surcharge as to the commodity of sand and gravel and others.)

(Said order received in evidence as shippers' exhibit 30, witness Moulton.)

254 EDWARD G. BUCKLAND, called by the carriers, testified:

I am chairman of the board of directors of the New York, New Haven & Hartford Railroad Company, and president of the Railroad Credit Corporation. I am familier with the issues involved in this proceeding, and state with reference thereto that the Railroad Credit Corporation was organized by the carriers to carry out the suggestion of the Interstate Commerce Commission in Ex parte 103 relative to the marshalling and distributing plan for the collection from carriers of additional revenues derived from increases authorized in Ex parte 103 and distributing the same through loans to needy carriers. This purpose was in pursuance of resolutions adopted by the member roads of the Association of Railway Executives on December 11, 1931. The movement which resulted in the marshalling and distributing plan was the application by the carriers made in June 1931 to the Commission for permission to increase all freight rates and charges 15 percent.

(Said application received in evidence as respondents' exhibit no. 1-W, witness Buckland.)

The commission conducted hearings upon the application, and on October 16, 1931, made a report denying a 15 percent increase, but suggested that it would permit increases on certain specified commodities, which increases the Commission thought would "produce between $100,000,000 and $125,000,000 increased revenue on the basis of present traffic if applied both State and interstate." 178 I.C.C., p. 579. The plan suggested by the Commission required that the revenues from the specified increases should be pooled and used for the purpose of giving reasonable assurance that fixed interest obligations not yet in default could be protected generally

255 from default. It requested the carriers to work out a specific plan to this end and submit it to the Commission for approval. The carriers submitted their plan wherein amounts collected from the increased rates should be turned into a fund from which amounts needed by carriers to protect their securities would be loaned rather than to be distributed as gratuities. The Commission's report of October 16, 1931, in Fifteen Percent case, 1931, Ex parte 103, 178 I.C.C. 539, was offered as evidence.

(Said report received in evidence as respondents' exhibit no. 2-W, witness Buckland.)

I also present a copy of the petition of the Association of Railway Executives presenting proposal of a plan pursuant to suggestion of the Commission in its said decision.

(Said petition received in evidence as respondents' exhibit no. 3-W, witness Buckland.)

On December 5th the Commission made its supplemental report on reconsideration and authorized the carriers to proceed with the plan they had proposed. (179 I.C.C. 215.)

(Said supplemental report received in evidence as respondents' exhibit no. 4-W, witness Buckland.)

Pending action by the Commission the carriers' committees had completed the organization of a Delaware corporation on the lines of the National Credit Corporation previously organized by the banks for mutual help. After the Commission's supplemental report of December 5th, a plan of operation in accordance with the supplemental report was prepared and assented to by the carriers.

(Copy of said plan, articles of association, and bylaws received in evidence as respondents' exhibit no. 5-W, witness Buckland.)

256 I present a letter of December 12th submitting to member roads proposed articles of association and bylaws.

(Said letter consisting of three pages and attached resolution consisting of four pages, received in evidence as respondents' exhibit no. 6-W, witness Buckland.)

Every class I railroad in the United States, with one negligible exception, assented. There were one or two conditional assents, but the conditions were not substantial. Within ten days, class I railroads earning 98.53 per cent of the total railroad revenue of the United States agreed to the plan. The plan provides that the Railroad Credit Corporation shall collect, receive, and administer the funds derived from the increases authorized. Every carrier by rail may participate except one in default or receivership or which derives less than 50 per cent of its revenue from freight transportation or a carrier by water. Participating carriers pay into the fund all revenue derived from the increase in rates permitted by the Commission, with the provision that if and when such carrier is required to pay any taxes because of the receipt of such revenue, the Corporation shall refund to it the amount of such taxes. Payments are due the Corporation within 40 days after the month in which it accrues and must be paid within 10 days thereafter. The fund is to be used to prevent, so far as possible, defaults by railroad companies in their fixed interest obligations. The Corporation is required, upon the application of any participating carrier, if the fund at the time is sufficient, to make such loan or loans as are necessary to enable the applying carrier to meet its fixed interest obligations. No loan is to be made to a carrier able to meet its fixed charges from

257 its earnings, other income, or other resources, nor to a carrier which even with the loan from the Corporation would still be unable to meet its fixed charges, or to one which has not complied in full with its obligations as a participlan, or to a carrier by water. The loaning period is to end May 31, 1933, two months after the limit fixed by the Commission upon the permitted increases. The rate of interest charged is to be the current rediscount rate of the

Federal Reserve bank of the New York district and shall be adjusted quarterly. From the start the rate has been 3 percent. Loans may be made for two years with the discretion in the Corporation to extend them for another two years. No dividends shall be paid by a recipient until the loan has been fully repaid with interest. The Corporation takes as security the best available collateral, with discretion in any case of important public interest to relax this requirement.

The Corporation was first confronted with the problem of rendition of relief before it had received any money from participating carriers. Fortunately, carriers had all made provision for their interest requirements due in January, and such requirements in February did not amount to much. Interest obligations to be met on March 1st were large. The Corporation gave assurance by resolutions that if and when funds were available it would take over any loan which it would have made if it had then been in funds. This assurance was accepted by some banks interested in certain affairs of the railroads, but most of the assistance came from the Reconstruction Finance Corporation in time to help with the March 1st maturities. In the menatime, due to progressive falling off in traffic, the estimated receipts of $100,000,000 to $125,000,000 for the period to March 3, 1933, had to be materially reduced and the estimate
258 of fixed interest requirements of the carrier had to be increased. Originally this latter sum was fixed at a maximum of about $60,000,000. It now (May 25, 1932) appears likely that it will exceed $100,000,000 for 1932, unless there is a decided change for the better in the trend of traffic. On the other hand, the receipts for 1932 are estimated not to exceed $60,000,000. Hence, instead of the Railroad Credit Corporation having at least $40,000,000 surplus during the period ending March 31, 1933, more than required for fixed interest obligations of participating carriers, they will probably have a deficit of that amount and probably more. Replying to inquiries from carriers as to whether increased revenues derived solely from intrastate rates were to be contributed to the fund, the Credit Corporation advised that the Commission's estimate of the receipts from the increases included intrastate as well as interstate rates and that increased revenues derived from intrastate traffic were equally impressed with the obligation and that any diminution of the fund through withholding intrastate increases would to that extent defeat the purposes of the plan.

On February 4, 1932, the Interstate Commerce Commission issued a circular directing that the entire revenue from the increases should be credited to the appropriate operating revenue accounts. This applied to increased revenue from intrastate as well as interstate traffic.

(I.C.C. Accounting Series Circular No. 68 received in evidence as respondents' exhibit no. 7-W, witness Buckland.)

To date, regulations of the Interstate Commerce Commission have been followed by all reporting carriers, and, without exception, all increases from intrastate, as well as interstate, rates have been reported and paid into the fund.

On April 1st the Corporation made its first report to the Commission and participating carriers.

259 (Copy of said report received in evidence as respondents' exhibit no. 8-W, witness Buckland.)

As of March 31, 1932, the Corporation reported that it had collected increases under Ex parte 103, amounting to $4,068,773.13; that it had authorized loans of $16,901,572.50; and that it had actually made loans of $2,363,120, leaving loans authorized but not made of $14,538,452.50, which represented commitments to reimburse the Reconstruction Finance Corporation for advances made by it to needy carriers which were to be taken over by the Railroad Credit Corporation when funds were available.

On May 2nd the Corporation made its second report to the Commission as of April 30, 1932.

(Said report and accompanying letter to participating carriers were received in evidence as respondents' exhibit no. 9-W, witness Buckland.)

After some language clarifying the report, the letter continued:

"The total loan authorizations now aggregate $18,681,159.50, of which $4,188,582 has been advanced, leaving a balance of $14,492,577.50 to be taken up.

"At the time the plan was made effective, estimates indicated that revenues would probably exceed requirements. It now seems that the reverse will happen; that loans for fixed interest obligations will be applied for in excess of expected revenue. To this end and for the purpose of carrying out the spirit of the plan and 'to apply the funds to be derived from the authorized increases in rates in aid of financially weak railroads', cooperation has been offered by applicant carriers, Interstate Commerce Commission, and Reconstruction Finance Corporation, looking to the loaning by the Reconstruction Finance Corporation to such carriers as can adequately secure their loans."

260 I quote from the letter because I wanted to draw attention to the fact that the Reconstruction Finance Corporation had been currently making loans to applicant carriers upon which adequate security was available without expecting the Railroad Credit Corporation to take them out. Prior to that time the Reconstruction Finance Corporation had accepted the assurance of the Railroad Credit Corporation with respect to taking them out of the loans in the expectation that the Railroad Credit Corporation would have enough money; but when it became apparent that the Railroad Credit Corporation would not have sufficient funds the Reconstruction Finance Corporation stepped into the breach and took this second step. While this situation, in some instances, leave' less adequately secured

loans to be made by the Railroad Credit Corporation, it is obviously that Corporation's duty to make such loans where it will enable the applicant carrier to meet its fixed interest obligations and avoid default thereon, taking as security the best available collateral and the pledge of the amounts due or to become due to the applicant upon distribution.

The disadvantage of the higher rate of interest on loans from the Reconstruction Finance Corporation (they are bound to charge 6 percent as against 3 percent charged by the Credit Corporation) is one of the sacrifices which the less needy carriers are being asked to make for the general good. This is because carriers that have ample collateral are getting loans directly from the Reconstruction Finance Corporation and paying 6 percent, whereas carriers without such collateral are getting loans from the Railroad Credit Corporation and paying 3 percent. I mention this to bring out the fact that we are making an earnest effort to carry out the suggestions of the Commission in Ex parte 103 that we should make our loans
261 for nominal rates of interest and without collateral if a carrier could not otherwise be saved and was worth saving.

Of the $14,492,577.50, aggregate of loans authorized but not made, as reported up to April 30, 1932, $6,069,687.50 have since been released by applicant carriers which, if approved by the Interstate Commerce Commission and Reconstruction Finance Corporation, will reduce the obligations of the Credit Corporation to $8,422,890.

I have just been advised that the State of West Virginia has cancelled certain intrastate increases under Ex parte 103 which will make a very serious inroad upon the funds to be distributed. Practically all the State and interstate increases which were authorized are in effect except coal and coke in West Virginia.

(It was further stated for the record that West Virginia had just withdrawn intrastate increases on all commodities hitherto granted. The emergency increases were applied in the different States at different dates. There are some commodities on which various southern States have declined to allow increases. In Kentucky the rates did not go into effect at all on any commodity or the classes. Insofar as the western district is concerned, the carriers have filed 13th section applications as to every State that did not grant the increases in full. Arizona granted the increases on all except cottonseed meal and cake, ores and concentrates, and fluxing stone, and after the filing of the petition (in 25135), and after the hearing was set, the hearing of the Arizona case was cancelled.)

Cross-examination

No carrier serving Kentucky intrastate has made application to the Railroad Credit Corporation for loans, nor has any loan been made to roads serving Kentucky intrastate shippers. A loan
262 was made to the Monon, which does not serve Kentucky intrastate. The Southern Railway has applied for loans from the

Reconstruction Finance Corporation, but not from the Railroad Credit Corporation. The Mobile & Ohio and the New Orleans and Great Northern and the Gulf & Ship Island are not Kentucky roads; they applied for loans. The Mobile & Ohio applied and received a loan.

I don't know what Southern States have made exceptions to the application intrastate of the surcharge. Such exceptions as are in effect have been made by the State commissions rather than by the carriers. Carriers have filed tariffs putting into effect the so-called Ex parte 103 increase, both interstate and intrastate, wherever they have been permitted to do so. A distinction was made between Louisiana and other Southern States in the institution of 13th section proceedings because Louisiana was considered one of the Western States and the Louisiana carriers joined with the carriers in Western States. I don't know why the carriers of Virginia did not file a 13th section application. The Virginia Public Service Commission made an exception to the increases authorized in Ex parte 103. The carriers serving Virginia did not make a 13th section application.

263 *List of exhibits*

There follows a copy of each exhibit which was filed as a part of the record before the Interstate Commerce Commission, a description of each of said exhibits being as follows:

Ex. no. 1: Order of Interstate Commerce Commission in Ex parte No. 103, dated October 16, 1931.

Ex. no. 2: Amended order of Interstate Commerce Commission in Ex parte No. 103, dated December 15, 1931.

Ex. no. 3: Application filed by Chairman Fonda, dated July 2, 1931, addressed to the Louisiana Public Service Commission, seeking on State traffic the same increases sought on interstate traffic.

Ex. no. 4: Application filed with the Louisiana Public Service Commission on December 19, 1931, amending previous petition and asking authority to apply the increases to the same extent authorized by the Interstate Commerce Commission in order dated December 15, 1931.

Ex. no. 5: Original application of East Side Lines to Louisiana Public Service Commission seeking, on State traffic, the same increases sought on interstate traffic.

Ex. no. 5-A: Supplemental application of East Side Lines to Louisiana Public Service Commission dated December 19, 1931.

Ex. no. 5-B: Supplemental application of East Side Lines to Louisiana Public Service Commission dated February 19, 1932.

Ex. no. 5-C: Supplemental application of East Side Lines to Louisiana Public Service Commission dated March 21, 1932.

Ex. no. 6: Order no. 897 of the Louisiana Public Service Commission dated February 8, 1932.

Ex. no. 7: Order no. 901 of the Louisiana Public Service Commission dated March 3, 1932, amending order no. 897.

264 Ex. no. 8: Statement showing estimate of increased revenue to Gulf Coast Lines if emergency increases authorized.

Ex. no. 9: Statement showing estimate of increased revenue to Missouri Pacific Railroad Company if emergency increases authorized.

Ex. no. 10: Statement showing estimate of increased revenue to New Orleans & Lower Coast Railroad Company if emergency increases authorized.

Ex. no. 11: Statement showing estimate of increased revenue to Texas and New Orleans Railroad Company if emergency increases authorized.

Ex. No. 12: Statement showing estimate of increased revenue to Texas & Pacific Railway Company if emergency increases authorized.

Ex. no. 13: Statement showing estimate of increased revenue to Louisiana & Arkansas Railway Company if emergency increases authorized.

Ex. no. 14: Statement showing estimate of increased revenue to Kansas City Southern Railway Company if emergency increased authorized.

Ex. no. 15: Statement showing estimate of increased revenue to Illinois Central System if emergency increases authorized.

Ex. no. 16: Statement showing valuation of property of Illinois Central Railroad Company and Yazoo and Mississippi Valley Railroad Company, combined, for years 1921 to 1931, inclusive.

Ex. no. 17: Statement showing property values of Illinois Central Railroad Company and Yazoo and Mississippi Valley Railroad Company, combined, as per tentative valuation with operating figures for three months ended March 31, 1932.

Ex. no. 18: Statement of revenues and expenses of Illinois Central System for three months ended March 31, 1932, compared with like figures for same periods for three previous years.

Ex. no. 19: Master tariff of emergency charges.

265 Ex. no. 20: Statement showing income and operating figures of each Louisiana railroad for years 1929 and 1930 and partial figures for year 1931.

Ex. no. 21: Map showing highway system of State of Louisiana.

Ex. no. 22: Map showing location of gravel pits in Louisiana.

Ex. no. 23: Statement showing incompleted road construction projects in Louisiana.

Ex. no. 24: Order no. 928 of Louisiana Public Service Commission dated April 30, 1932, in regard to rates on sand and gravel between points in Louisiana east of the Mississippi River.

Ex. no. 25: Order of Arkansas Railroad Commission dated February 4, 1931, with regard to certain switching allowances.

Ex. no. 26: Authority of Louisiana Public Service Commission to Illinois Central Railroad Company permitting certain reduced rates on sand and gravel east of the Mississippi River.

171926—33——14

Ex. no. 27: Order no. 928 of Louisiana Public Service Commission dated April 30, 1932, in regard to rates on sand and gravel between points in Louisiana east of the Mississippi River.

Ex. no. 28: Statement showing present and prescribed rates on sand, gravel, etc., between points in Louisiana east of the Mississippi River.

Ex. no. 29: Comparative statement showing 17517 scale versus 17000 scale of rates up to 450 miles.

Ex. no. 30: Order no. 6728 of Mississippi Railroad Commission dated January 16, 1932.

266 *Notation as to duplication of exhibits*

Exhibit attached to and made part of testimony before Interstate Commerce Commission, marked "Exhibit 1", being Order of Interstate Commerce Commission in Ex parte No. 103, dated October 16th, 1931, is the same as exhibit marked "B", attached to bill of complaint, heretofore copied at page 75 of this transcript.

Exhibit attached to and made part of testimony before Interstate Commerce Commission, marked "Exhibit —", being Commission's Supplemental Report and Appendix thereto (179 I.C.C. 215), is the same as Exhibit marked "C", attached to bill of complaint, heretofore copied at page 125 of this transcript.

267 *Exhibit, marked "I.C.C. Ex. No. 3, Witness Fonda", being petition of railroads in the State of Louisiana*

Before the Louisiana Public Service Commission

Application No. 349, Docket No. 1703

In the matter of increases in freight rates and charges

Petition of railroads in the State of Louisiana

A. C. Fonda, Agent

Dallas, Texas.
July 2, 1931.
1812–14 Santa Fe Bldg.,
File: 3106—La.

PETITION

Now comes A. C. Fonda, agents for the railroads operating in the State of Louisiana and subject to the jurisdiction of your honorable Commission in respect to intrastate transportation by railroad in said State and on their behalf respectfully shows:

I.

That at the present time carriers by railroad are confronted with an emergency threatening serious impairment of their financial re-

sources and of their capacity to render efficient and adequate transportation service. It is therefore necessary in the public interest, as well as in the interest of your petitioners, that increases in freight rates and charges be made effective at the earliest practicable date.

II

That in view of these facts, your petitioners have submitted to the Interstate Commerce Commission a statement and application outlining the pertinent facts which indicate that the provisions of the Interstate Commerce Act justify and require freight rates and charges, at least fifteen percent in excess of existing freight rates and charges to be made effective at the earliest possible date. A copy of the statement and application referred to is hereto attached and marked "Exhibit A."

268 III

That the conditions which require an advance in interstate freight rates and charges apply equally to intrastate freight rates and charges, and an advance in the latter rates and charges equal and corresponding to those proposed for interstate freight rates and charges, as above indicated, is necessary in order to afford your petitioners the minimum measure of relief necessary in the present emergency. Should an advance in interstate freight rates and charges be authorized by the Interstate Commerce Commission, it is essential, in order that undue and unreasonable discrimination against interstate commerce and undue prejudice against shippers and localities in interstate commerce may be avoided, and in order that the increases in freight rates and charges may be fairly and equitably distributed throughout the respective States, that the increased rates and charges on intrastate freight traffic should conform to and harmonize with those authorized or established by the Interstate Commerce Commission on interstate traffic.

IV

That the publication of tariffs covering an entire schedule of freight traffic will involve considerable delay. Your petitioners, therefore, respectfully request that they be permitted to make the increases in freight rates and charges herein proposed effective by the publication of percentage supplements to existing tariffs, thus affording the immediate relief which the emergency demands. It will be the purpose of your petitioners to amend their tariffs as soon as possible thereafter by appropriate tariff publications naming specific rates and charges.

Wherefore your petitioners respectfully request that this Commission authorize the carriers by railroad in the State of Louisiana, by filing tariffs in the form of percentage supplements to existing tariffs to make the same percentage increase in all intrastate freight rates

and charges in said State as shall be authorized or directed by the Interstate Commerce Commission in the aforesaid proceeding with respect to interstate freight rates and charges, such increases to become effective on the date on which the increases in interstate freight rates and charges shall become effective.

Respectfully submitted.

DALLAS, TEXAS, *July 2, 1931.* A. C. FONDA, *Agent.*

269 Application filed with Louisiana Public Service Commission on December 19, 1931, amending previous petition marked "Carriers 4"

(Letter-head of)

Texas-Louisiana Tariff Bureau

Office of Chairman

3106—La.

DALLAS, TEXAS, *December 19, 1931.*

Amended application no. 349, in re: L.P.S.C. case no. 1703—A. C. Fonda's application no. 349, July 2, 1931—General increases in freight rates and charges

To the Honorable LOUISIANA PUBLIC SERVICE COMMISSION,
Baton Rouge, La.

GENTLEMEN: There was filed by the undersigned with your Commission under date of July 2, 1931, application for and on behalf of the Louisiana carriers seeking revision in freight rates and charges on Louisiana intrastate traffic the same as sought in petition filed with the Interstate Commerce Commission for application on interstate traffic, the latter being handled under I.C.C. Docket Ex parte 103.

Action of the Interstate Commerce Commission in the proceeding referred to is covered by reports and decisions issued on October 16th and December 5th, 1931. By these reports and decisions the Interstate Commerce Commission has authorized, with certain exceptions, general advances in freight rates and charges and the carriers are now taking necessary steps to make effective at an early date the increased interstate rates.

The Louisiana carriers now desire to amend application no. 349 of July 2, 1931, so as to petition for application on Louisiana intrastate traffic the same increases in freight rates and charges as have been authorized and subject to same conditions as prescribed by the Interstate Commerce Commission.

There is attached hereto and made a part hereof, marked "Exhibit A," statement of the increases in rates authorized by the Inter-

state Commerce Commission on interstate traffic and on which authority is sought to make effective on Louisiana intrastate traffic concurrently with effectiveness of the interstate revision.

270 The reports and decisions of the Interstate Commerce Commission in Ex parte 103 are replete with information as to the condition of the carriers and the urgency of affording them immediate relief. Copies of these reports and decisions are no doubt on file with your Commission.

Your Commission is also fully conversant with the needs of the carriers and the necessity for promptly granting the increases sought herein.

Immediate action on this petition is respectfully urged and requested.

Yours truly,

A. C. FONDA, *Chairman.*

LD/s

271 Exhibit A to amend application no. 349

There is shown below plan for increasing freight rates and charges on Louisiana intrastate traffic which is the same as that authorized on interstate traffic.

In the tables which follow, the numbered generic descriptions of commodities or commodity groups are those specified in the order of the Interstate Commerce Commission, Division 4, of November 22, 1927, In the Matter of Freight Commodity Statistics. Except as otherwise provided and except where prefixed by circle 1, they cover the specific items customarily included by the carriers in their reports to the Interstate Commerce Commission under each numbered description. Where prefixed by circle 1, the designated descriptions apply only on the commodities specifically here named.

List A

On commodities, in carloads, except as otherwise noted, included under the following descriptions, there shall *no* no increase:

Account number	Description
10	Wheat.
20	Corn.
30	Oats.
40	Barley and rye.
41	Rice.
42	Grain, n.o.s.
50	Flour, wheat.
51	Meal, corn.
52	Flour and meal, edible, n.o.s. except cassava flour, sago flour, and tapioca flour.
61	Mill products n.o.s., except alfalfa meal.
70	Hay and alfalfa.
71	Straw.
90	Cotton in bales, any quantity.
91	Cotton linters, noils, and regins.
100	Cottonseed.

Account number	Description
120	Apples, fresh.
122	Berries, fresh.
124	Grapes, fresh.
125	Peaches, fresh.
127	Fruits, fresh, domestic, n.o.s.
130	Potatoes, other than sweet.
150	Beans and peas, dried.
162	Flaxseed.
163	Sugar beets.
164	(1) Products of agriculture, n.o.s., as follows: Corncobs; corncob meal; Corn husks or shucks; corn stalks; Flaxseed hulls.
170	Horses, mules, ponies, and asses.
180	Cattle and calves, single deck.
272 181	Calves, double deck.
190	Sheep and goats, single deck.
191	Sheep and goats, double deck.
200	Hogs, single deck.
201	Hogs, double deck.
400	Logs.
402	Wood (fuel).
410	Ties, railroad.
443	(1) Excelsior (wood), wood shavings, n.o.i.b.n., and sawdust.
701	(1) Cotton waste, other than manufactured packing or wiping waste.

List B

On commodities, in carloads, included under the following numbered descriptions, there may be an increase of 6 cents per ton of 2,000 pounds:

Account number	Description
290	Anthracite coal.
300	Bituminous coal.
310	Coke.
320	Iron ore.
330	Copper ore and concentrates.
331	Lead ore and concentrates.
332	Zinc ore and concentrates.
333	Ores and concentrates, n.o.s.
350	Gravel and sand (other than glass or moulding).
351	Stone, broken, ground, or crushed; coated sand and coated rock road-building material.
392	(1) Products of mines, n.o.s., as follows: Borate rock. Bituminous rock. Bituminous asphalt rock. Iron pyrites. Limestone, crushed or ground. Dolomite. Earth or soil, n.o.i.b.n. Feldspar. Fluerspar.
273	Fluxing stone.
	Ganister rock. Glass sand. Crude gypsum. Loam. Molding sand. Nickel matte. Ore residue. Slate, crushed, ground, or scrap. Volcanic ash.

Account number	Description
420	Pulpwood.
491	(1) Mill cinder and mill scale, iron, or steel.
692	Furnace slag.
701	(1) Pyrites cinder, refuse, or dross.
701	(1) Coal ashes and cinders.
701	(1) Brickbats and brick dust.

List C

On commodities, in carloads, included under the following numbered descriptions there may be an increase of 12 cents per ton of 2,000 pounds:

Account number	Description
352	Stone, rough, n.o.s.
390	Phosphate rock, crude (ground or not ground).
391	Sulphur (brimstone).
392	(1) Products of mines, n.o.s., as follows:
	Bentonite.
	China clay.
	Ground flint.
	Fire clay.
	Gilsonite.
	Ground gypsum, not calcined.
	Kaolin.
	Barium sulphate, ground (barytes), not precipitated.
	Barium sulphate, ground (barytes), precipitated (blanc fixe).
	Magnesium sulphate, crude or kieserite.
	Mica scrap or screenings.
274	Pipe clay.
	Shale.
	Slate, not crushed, ground or scrap.
	Soapstone (talc) ground, dust, lump, or rough slabs.
	Chalk, crude.
	Clay, n.o.i.b.n.
	Cobblestones.
	Flint pebbles.
	Marble chips.
401	Posts, poles, and piling.
430	Lumber (made of domestic or Canadian wood or Mexican pine only).
430	Lathe and shingles.
431	Box, crate, and cooperage materials.
432	Veneer and built-up wood, made wholly of domestic or Canadian wood or Mexican pine.
443	(1) Products of forests, n.o.s., as follows:
	Acid wood.
	Barks:
	Black oak (stick).
	Cedar, shredded.
	Hickory, not ground or powdered.
	Redwood, shredded.
	Tanbark:
	Leaf (stick).
	Ground, spent or not spent.
	Wood charcoal briquettes.
	Brush, riprapping.
	Charcoal, wood.
	Chemical wood.
	Chips (shavings), brewers or vinegar.

Account number	Description
443	(1) Products of forests, n.o.s., as follows—Continued.
	Cigar box wood.
	Cones, fir or pine.
	Cork dust (cork bark refuse).
	Cork chips, shavings, virgin bark, waste or refuge.
	Palm kernels.
	Pine needles.
	Shingle tow or shavings.
275 490	Pig iron.
693	Scrap iron or scrap steel.

List D

On commodities, in carload, except as otherwise noted, included under the following numbered and unnumbered descriptions, there may be an increase of 1 cent per 100 pounds:

Account number	Description
80	Tobacco, leaf, unmanufactured, any quantity.
101	Cottonseed meal and cake.
110	Oranges and grapefruit.
111	Lemons, limes, and citrus fruits, n.o.s.
123	Cantaloupes and melons, n.o.s.
126	Watermelons.
140	Cabbage.
141	Onions.
142	Tomatoes.
143	Vegetables, fresh, n.o.s.
151	Fruits, dried or evaporated.
152	Vegetables, dried, n.o.s.
160	Vegetable-oil cake and meal, except cottonseed.
161	(1) Peanuts, raw.
164	(1) Products of agriculture, n.o.s., as follows:
	Alfalfa seed.
	Apple waste.
	Apricot kernels.
	Bagasse.
	Barley or grain skimmings, malthouse.
	Barley sprouts.
	Bean meal (ground beans) n.o.i.b.n.
	Beans, soya.
	Beet pulp or residue.
	Broomcorn.
	Cane seed.
	Chufas.
	Clover seed.
276	Cocoa bean refuse (cocoa dust).
	Copra.
	Cow peas.
	Cucumbers in tank cars.
	Fenugreek seed or meal.
	Fodder, n.o.i.b.n.
	Fruit pits or stones, n.o.i.b.n.
	Fruit peel, not candied or crystalized.
	Fruit pulp.
	Grains, spent, dry or wet.
	Grass seed.
	Hemp stalks.
	Kapok seed or Kapok-seed meal.
	Malt, malted grain or malt sprouts.
	Meal, alfalfa, clover, peanut vine or sorghum, or chopped alfalfa.

Account number		Description
	164	(1) Products of agriculture, n.o.s., as follows—Continued.
		Millet seed.
		Mustard seed.
		Pea meal.
		Peanut grits.
		Peanut hulls or chaff.
		Pomace, n.o.i.b.n.
		Rapé seed or rape-seed meal.
		Sorghum seed or meal.
		Tobacco stems, ground or unground.
		Tomato refuse (from canneries).
		Unmanufactured tobacco cuttings, siftings, scraps or sweepings.
		Velvet beans or velvet-bean meal.
	353	Stone, finished, n.o.s.
	360	Petroleum, crude.
	370	Asphalt (natural, by-product or petroleum).
	440	Rosin.
	441	Turpentine.
	443	(1) Pine tar.
	450	Petroleum, oils, refined and all other gasolines.
277	451	Fuel, road and petroleum residual oils, n.o.s.
	452	Lubricating oils and greases.
	453	Petroleum products, n.o.s.
	540	Cement, natural or portland (building).
	550	Brick, common.
	551	Brick, n.o.s., and building tile.
	552	Artificial stone, n.o.s.
	560	Lime, common (quick or slacked).
	630	Ice.
	640	Fertilizers, n.o.s.
	697	Building woodwork (millwork).
	701	(1) Soapstone forms or slabs, including fire box or furnace linings.
	701	(1) Tar, and pitch, except brewers' and montan.
	701	(1) Feed, animal or poultry, n.o.i.b.n. and not including biscuits, dog (dog cakes).

On all other commodities, including all less-than-carload freight, there may be an increase of 2 cents per 100 pounds.

The increases set forth above are subject to the following provisos:

1. In no event shall the increase levied on any shipment be in excess of 10 percent of the charges which would be assessed in the absence of the increase.

2. Where rates are stated in schedules in dollars per car the respective increases shall be $7.50 per car if the increase as shown above is 1 cent per 100 pounds; $10.00 per car is such increase is 2 cents per 100 pounds; $3.00 per car if such increase is 6 cents per ton; and $5.00 per car if such increase is 12 cents per ton.

3. Shipments of petroleum products and furniture, moving under rates the same as or less than those prescribed or approved in no. 17000—parts 4, 4-A, and 5, shall not be subject to any surcharge under these findings, on and after the dates when the rates covered by said findings become effective. When shipments of such commodities move under combination rates all factors of which are not filed in compliance with the decisions in no. 17000 the above authorized increases will apply to the through movement.

4. Where through shipments move under combination rates subject to the jurisdiction of this Commission, but one increase may be applied on such shipments. This proviso does not apply where there are two movements subject to the jurisdiction of this
278 Commission separated by an intermediate movement not subject to the jurisdiction of this Commission. Where shipments move under transit on a basis which applies a through rate (either with or without a transit or out-of-line charge) the increase or subcharge should be applied but once.

Where the minimum weights are different in connection with the separate factors in combination through rates, the increase shall be based on the highest minimum, unless a lower total results from applying the above-authorized increases separately to each factor or an aggregation of factors, subject to the minimums attaching thereto.

Weights

The increases authorized shall apply to the weight on which the charges are based.

Mixed carloads

Mixed carload shipments shall be subject to the highest surcharge provided for any article in the carload, except where a lower total results by surcharging a portion of the shipment as less than a carload and the remainder as a carload.

Switching, floatage, and lighterage charges

All switching, floatage, and lighterage charges collected from shippers or receiver may be increased 10 percent, except that no increase shall apply on articles in list A.

Carriers by water

Where rates of water carriers are subject to the jurisdiction of this Commission, covering transportation partly by water and partly by railroad, the increases herein suggested may in like manner be applied to such rates.

Rates prescribed and not yet effective

It is contemplated that the increases herein set forth will be superimposed upon the rates now in effect, whether established by order or authorities of the Commission or the voluntary act of the carriers (including rates held in effect by reason of investigation and suspension orders), and also upon rates prescribed by outstanding orders of the Commission not yet in effect, when and as the rates therein prescribed become effective, subject to the exceptions noted above.

279 *Exhibit 5, being original application of East Side Lines to Louisiana Public Service Commission seeking on State traffic the same increases sought on interstate traffic*

Before the Alabama Public Service Commission; Railroad Commission, State of Florida; Georgia Public Service Commission; Railroad Commission of Kentucky; Louisiana Public Service Commission; Mississippi Railroad Commission; State of North Carolina Corporation Commission; Railroad Commission of South Carolina; Tennessee Railroad and Public Utilities Commission; Commonwealth of Virginia State Corporation Commission

ATLANTA, GA., *June 20, 1930.*
File 1-4700

Interstate Commerce Commission, Docket No. 25135-5
Exhibit # 5

Witness, carriers

Complainants, defendants, commissions. 5-6-32. Murray

In the Matter of Increases in Freight Rates and Charges

To the
Alabama Public Service Commission;
Railroad Commission, State of Florida;
Georgia Public Service Commission;
Railroad Commission of Kentucky;
Louisiana Public Service Commission (see note);
Mississippi Railroad Commission;
State of North Carolina Corporation Commission;
Railroad Commission of South Carolina;
Tennessee Railroad and Public Utilities Commission;
Commonwealth of Virginia State Corporation Commission.

J. E. Tilford, chairman of the executive traffic committee of the carriers in the Southern Group, for and on behalf of all steam railroads operating in your respective States, hereinafter called petitioners, respectfully represents that at the present time petitioners are confronted with an emergency threatening serious impairment of their financial resources and of their capacity to assure the public a continuance of efficient and adequate service. It is therefore imperatively necessary in the public interest, as well as in the interest of your petitioners, that increases in rates and charges be made effective at the earliest practicable date.

Because of this emergency your petitioners have submitted to the Interstate Commerce Commission a statement outlining, in a general way, the facts in the situation which, in their judgment, in-

dicate that the provisions of the Interstate Commerce Act justify freight rates at least fifteen percent in excess of existing freight rates and charges. A copy of the statement referred to is hereto attached and marked "Exhibit A."

NOTE.—This petition is on behalf of railroads in the Southern Group operating east of the Mississippi River.

280 The conditions which call for and necessitate an advance in interstate freight rates and charges apply equally to intrastate freight rates and charges and an advance in these rates and charges equal to that in interstate rates and charges above indicated is necessary in order to afford your petitioners the measure of relief necessary in the present emergency; and should an advance in interstate rates and charges be authorized by the Interstate Commerce Commission it is essential, in order that the increases in rates and charges may be fairly and equitable distributed throughout the Southern States, that the advance in rates and charges on intrastate traffic should conform to and harmonize with those authorized or established by the Interstate Commerce Commission on interstate traffic, and concurrently with the changes in the rates and charges on interstate traffic.

The publication of tariffs covering an entire schedule of freight rates requires a period of many months. Your petitioners, therefore, ask that in the event the increases herein sought are approved, they be permitted to make those increases effective by the publication of percentage supplements to the existing tariffs, thus affording the immediate relief which the emergency demands. It will be the purpose of your petitioners, if permitted to make such tariffs effective to amend them so soon as possible by tariff publications naming specific rates and charges.

Wherefore your petitioners respectfully request that your Commission authorize the carriers by steam railroad in your respective State, by filing percentage supplements to the existing tariffs, to make the same percentage advance in all intrastate freight rates and charges as shall be authorized or directed by the Interstate Commerce Commission in the proceeding initiated before it as to interstate rates and charges, such advance to become effective on the date on which the advance in interstate rates and charges shall become effective.

(Signed) J. E. TILFORD,
Chairman, Executive Traffic Committee
of Carriers in Southern Group.

281 *Exhibit 5-A—Supplemental application of East Side Lines to Louisiana Public Service Commission, dated December 19, 1931*

Before the Alabama Public Service Commission, Railroad Commission, State of Florida, Georgia Public Service Commission, Railroad Commission of Kentucky, Louisiana Public Service Commission, Mississippi Railroad Commisson, State of North Carolina Corporation Commission, Railroad Commission of South Carolina, Tennessee Railroad and Public Utilities Commission, Commonwealth of Virginia State Corporation Commission

48. Received in evidence. G.H.M., May 24, 1932

ATLANTA, GA., *December 19, 1931.*
File 1-4700-4.

In the Matter of Increases in Freight Rates and Charges

To the
Alabama Public Service Commission,
Railroad Commission, State of Florida,
Georgia Public Service Commission,
Railroad Commission of Kentucky,
Louisiana Public Service Commission (see note),
Mississippi Railroad Commission,
State of North Carolina Corporation Commission,
Railroad Commission of South Carolina,
Tennessee Railroad and Public Utilities Commission,
Commonwealth of Virginia State Corporation Commission.

J. E. Tilford, chairman of the executive committee of the carriers in the Southern Group, for and on behalf of all steam railroads operating in your respective States, hereinafter called petitioners, respectfully submits this amended and supplemental petition to the petition hereinbefore filed by him, dated June 20, 1931, and, supplementary to said original petition, says:

That, having before it the statement and application of the steam railroads of the United States, which was filed as exhibit A with the petition herein, of date June 20, 1931, the Interstate Commerce Commission docketed the same on the 19th day of June, 1931, under the title "In the matter of increases in freight rates and charges—Ex parte 103", and ordered that the same be set for hearing as the Commission might thereafter order.

That subsequent to said order of June 19, 1931, the Interstate Commerce Commission conducted and held a series of hearings
282 therein at Washington, D.C.; Portland, Me.; Atlanta, Ga.; Dallas, Tex.; Kansas City, Mo.; Portland, Ore.; San Francisco, Calif.; Salt Lake City, Utah; and Chicago, Ill., and there after and following such hearings the proceeding was assigned for

oral argument before the Commission on September 21, 1931, the oral argument being concluded and the case submitted to the Commission on September 30, 1931. During the course of said hearings all parties having any interest in said proceeding were afforded an opportunity to be heard and were heard.

That, thereafter, on October 16, 1931, the Commission made a report in said proceeding, copy of which is marked "Exhibit B" and hereto attached.

That, following said report of the Interstate Commerce Commission, the steam railroad carriers of the United States, on November 19, 1931, presented to and filed with the Interstate Commerce Commission the plan inaugurated by the carriers to make effective the increases provided for in the report of the Interstate Commerce Commission, of date October 16, 1931, a copy of said plan is hereto attached and marked "Exhibit C."

That, after due notice to interested parties, oral argument was heard before the Commission on November 28, 1931, upon the plan which had been submitted by the carriers to the Commission, and on December 5, 1931, the Commission made its supplemental report on reconsideration, in which its former report of October 16, 1931, 178 I.C.C. 539, was modified by vacating certain conditions attached to increases in rates authorized and changing somewhat the methods used in determining in each instance the amount of the increase. Said supplemental report of December 5, 1931, is attached hereto, marked "Exhibit D", and made a part hereof.

That petitioners have heretofore caused to be filed with you a full and complete copy of the stenographers' minutes of the pro-
283 ceedings before the Interstate Commerce Commission in said Ex parte 103.

That the conditions which called for and warranted the increases in interstate freight rates and charges, which have been authorized by the Interstate Commerce Commission, apply equally to intrastate freight rates and charges, and increases in these rates and charges, equal to the increases in interstate freight rates and charges as authorized by the Interstate Commerce Commission, as set forth in its report of October 16, 1931, as modified by the supplemental report of December 5, 1931, are necessary in order to afford your petitioners the measure of relief necessary in the present emergency, and in order that the increases in rates and charges may be fairly and equitably distributed throughout the Southern States, it is necessary that the advances in rates and charges on intrastate traffic should conform to and harmonize with those authorized and established by the Interstate Commerce Commission on interstate traffic, and concurrently with the rates and charges established on interstate traffic.

That the publication of tariffs covering entirely new schedules of freight rates and charges, covering increases as authorized by the Interstate Commerce Commission, would require a period of many months. Your petitioners therefore ask that the increases herein sought be approved and authorized, and that they be permitted to

make these increases effective by the publication of general supplements to existing tariffs, thus affording the immediate relief which the emergency demands.

Wherefore your petitioners respectfully request that your Commission authorize the carriers by steam railroad in your respective State, by filing general blanket supplements to existing tariffs, to make the same increases in all intrastate freight rates and charges as have been authorized by the Interstate Commerce Commission in the case entitled "In the matter of increases in freight rates and charges—Ex parte 103", such advances to become effective
284 on the date on which the advances in interstate rates and charges shall become effective, or, in any event, at the earliest practicable date.

J. E. TILFORD,
Chairman, Executive Traffic Committee
of Carriers in Southern Group.

NOTE.—This petition is on behalf of railroads in the Southern Group operating east of the Mississippi River.

285 *Exhibit marked "5-B", being supplemental application of East Side Lines to the Louisiana Public Service Commission, dated Feb. 19, 1932*

Before the Alabama Public Service Commission (special approval 4087), Georgia Public Service Commission (file 18438), Louisiana Public Service Commission (order 897), Mississippi Railroad Commission (no. 6728), State of North Carolina Corporation Commission (orders Jan. 7 & 18), Railroad Commission of South Carolina (docket 1174, order 826), Tennessee Railroad and Public Utilities Commission (docket 1654), Commonwealth of Virginia State Corporation Commission (case no. 4804)

ATLANTA, GA., *February 19th, 1932* pwn
File 1-4700-4.

Supplemental Petition in the Matter of Increases in Freight Rates and Charges. 5-B

To the
Alabama Public Service Commission,
Georgia Public Service Commission,
Louisiana Public Service Commission (see note),
Mississippi Railroad Commission,
State of North Carolina Corporation Commission,
Railroad Commission of South Carolina,
Tennessee Railroad and Public Utilities Commission,
Commonwealth of Virginia State Corporation Commission.

J. E. Tilford, chairman of the executive committee of the carriers in the Southern Group, for and on behalf of all steam railroads

operating in your respective States, hereinafter called petitioners, respectfully submits this amended and supplemental petition to the petition hereinbefore filed by him, dated June 20, 1931, and December 19, 1931, and says:

That experience in the application of the provisions of the emergency charge tariff, Agent F. L. Speiden's Tariff No. 250, I.C.C. No. 1600, since became effective on January 4th, 1932, for interstate traffic and on subsequent dates for intrastate traffic, shows the definite necessity for making clearer the application of the rules governing the charges and to give the results intended when the rules were published. Certain changes are also considered necessary and desirable in the emergency charges applicable on a few commodities. The changes proposed are set forth in appendix 1 attached hereto and made a part hereof.

286 Emergency charges rules

It is obviously difficult to state rules for nation-wide application which will receive the same interpretation by the numerous shippers and carriers representatives throughout the country. Each rule in the present tariff was reviewed in the light of misinterpretation and questions that have developed and where it was considered necessary, because of faulty working of the present rules, an amended rule is proposed for the purpose of avoiding misinterpretation and to insure, so far as practicable, the application of the emergency charges permitted by the decision of the Interstate Commerce Commission in Ex parte 103 and in the decisions of the several State commissions. The following is a brief summary of the changes proposed:

Item 5.—Application of the emergency charges: No change is proposed in the rule, but an exception made with respect to item 50 (c) and (d).

Item 10.—Maximum emergency charge: No change is proposed in the rule, but a note is added to clearly show that the 10 percent maximum increase shall be applied to the line-haul transportation charge without addition or deduction.

Item 20.—Transit shipments: Paragraph (a) of this rule, which applies where transit shipments are subject to a through transportation rate from original origin to final destination, has been revamped for the purpose of clearly stating the intended application where all or a part of the inbound products take no emergency charge. In such cases the new rule definitely provides for the application of the emergency charge from the transit point, and since the emergency charge will not be computed as from the original origin an exception is made with respect to the application of the 10 percent maximum. It is considered reasonable, since the total transportation charge from original origin to final destination is

not taken into consideration in the application of the emergency charge, that the 10 percent maximum should be waived and not applied to the transportation charge from the intermediate transit point.

A rule has been shown to definitely provide for the assessment of the emergency charge from the transit point on any portion of a shipment for which transportation charges are assessed from the transit point to final destination.

A rule has also been provided to definitely state that the emergency charge shall not be applied to the charge for transit privileges or for out of line or back hauls, except that the out of line or back hauls are to be considered a part of the transportation charges in applying item 20.

287 Item 25.—Mixed carload shipments: It is proposed to change the present rule to provide for the application of the emergency charges on the deficit weight when a mixed carload shipment is less than the minimum weight. A definite rule is also provided for the computation of combination rates on mixed carload shipments which are now governed by item 15 in connection with item 25.

Item 30.—Floatage, lighterage, and switching: The only change in the rules is to definitely include charges on trap cars, station order cars, or ferry cars. A note has been added to clearly show that the emergency charges shall not operate to increase the amount of floatage, lighterage, or switching charges which are absorbed out of the line-haul charge.

Item 45.—Less carload freight: Paragraph (f) which covers single less carload shipments upon which minimum charges have been assessed, has been revised to more clearly state the intended application and to also simplify the application, the present rule being very complicated from a practicable standpoint.

Item 50.—Carload freight: Paragraph (d) is proposed to be added to clearly show that the emergency charge of 10 percent will be added to the carload minimum charges not based on weight except where commodities are exempt from the emergency charges.

Emergency charge rates

The few changes which are proposed in the emergency charge rates are the result of questions or protests presented by various interests, chiefly on representations of shippers which indicate the necessity for placing commodities in better relationship or of making specific provision for commodities not now specified, so as to bring them into proper grouping with other articles which were specifically named in the Commission's plan of emergency charges. Generally speaking, it is impracticable to remove rate inconsistencies or to observe the ordinary standards of rate relationship without disturbing and eventually destroying the entire plan.

Some of the changes are for clarification and to avoid disputes. In a few instances the proposed changes contemplate removal of the inconsistencies by increases, and in some other cases by both increases and reductions, the reductions being contingent upon the increases.

A sixth section application, dated February 11th, 1932, on behalf of all carriers in the United States, has been filed with the Interstate Commerce Commission requesting authority to make the same changes as set forth in appendix no. 1 attached hereto, effective upon ten days' notice. The carriers regard it as essential that the master tariff of emergency charges shall be applied in every territory without departure from uniformity and for that reason desire to make the proposed changes applicable on both interstate and intrastate traffic.

288

Wherefore your petitioners respectfully request that your Commission authorize the carriers by steam railroad in your respective States, by filing a revised emergency charge tariff, to make the changes here proposed and set forth in appendix no. 1 attached hereto, the changes to be made effective simultaneously with corresponding changes on interstate traffic.

Respectfully submitted.

_____,

Chairman, Executive Traffic Committee of Carriers in Southern Group.

289–296 [Omitted.]

297 *Exhibit marked "5-C", being supplemental application of East Side Lines to Louisiana Public Service Commission, dated March 21, 1932*

Before the Alabama Public Service Commission (special approval 4087), Railroad Commission State of Florida (order no. 1102), Louisiana Public Service Commission (no. 1817), Mississippi Railroad Commission (no. 6728), State of North Carolina Corporation Commission (order Jan. 7 & 18), Railroad Commission of South Carolina (docket 1174, order 826), Tennessee Railroad & Public Utilities Commission (docket 1654), Commonwealth of Virginia State Corporation Commission (case #4804), Georgia Public Service Commission (file 18438)

ATLANTA, GA., *March 21st, 1932.* j.
File 1-4700-4.

Supplemental Petition in the Matter of Increases in Freight Rates and Charges 5-C

To the
Alabama Public Service Commission,
Georgia Public Service Commission,
Louisiana Public Service Commission,
Mississippi Railroad Commission,
State of North Carolina Corporation Commission,
Railroad Commission of Florida,
Railroad Commission of South Carolina,
Tennessee Railroad & Public Utilities Commission,
Commonwealth of Virginia State Corporation Commission.

J. E. Tilford, chairman of the executive committee of the carriers in the Southern Group, for and on behalf of all steam railroads operating in your respective States, hereinafter called petitioners, respectfully submits this amended and supplemental petition to the petition hereinbefore filed by him, dated June 20, 1931, December 19, 1931, and February 19, 1932, and says:

The Interstate Commerce Commission by special permission no. 112536 of March 12th, 1932, copy of which is attached hereto marked "Appendix 2", has authorized a revision in the tariff of emergency charges, Agent F. L. Speiden's Tariff No. 250, I.C.C. 1600, items 5 to 50, inclusive, covering the rules governing the application of the tariff; also a revision in specific items as set forth in exhibit A of the order, all of which are authorized to be made effective on not less than ten days' notice.

The revised rules and charges in accordance with the authority granted by the Interstate Commerce Commission are shown in tariff of emergency charges, Agent F. L. Speiden's Tariff No. 250-A. I.C.C. No. 1616, copy of which is attached hereto and marked "Appendix 3".

298 The Interstate Commerce Commission by special permission 112644 of March 17th, 1932, authorizes a reduction in the emergency charge on sugarcane, carload, from 2 to 1 cent per hundred pounds. This change is shown in supplement 1 to tariff of emergency charges, Agent F. L. Speiden's Tariff No. 250-A, I.C.C. No. 1616, attached hereto and marked "Appendix 4".

As stated in the supplemental petition of February 19th, 1932, the carriers regard it as essential that the master tariff of emergency charges shall be applied in every territory without departure from uniformity and for that reason desire to make the proposed changes applicable on both interstate and intrastate traffic.

Wherefore your petitioners respectfully request that your Commission authorize the carriers by steam railroad in your respective States by filing lettered supplements to Agent Speiden's Tariff No. 250-A, I.C.C. No. 1616, to make the changes here proposed and set forth in appendices 2, 3, and 4 effective simultaneously with corresponding changes on interstate traffic.

Respectfully submitted.

_____,

Chairman Executive Traffic Committee of Carriers in Southern Group.

299 *Notation as to exhibits 6 and 7*

Exhibits marked "Nos. 6 and 7", being order no. 897 of Louisiana Public Service Commission dated February 8th, 1932, and order no. 901 of the Louisiana Public Service Commission dated March 3, 1932, amending order no. 897, are the same as exhibit B attached to the bill of complaint, copied heretofore at page 75 of this transcript.

300 *Exhibit 8, being statement showing estimate of increased revenue to Gulf Coast Lines if emergency increases authorized*

Gulf Coast Lines

Statement showing estimate of increase charges if emergency increase as authorized by the I.C.C. is applied to commodities listed in "Excluded list of order 897" on Louisiana intrastate traffic, based on 1931 freight traffic

Commodity	Tons	Estimate increase
Fertilizer, n.o.s	1,500	$300.00
Vegetables, n.o.s	110	22.00
Cottonseed meal, cake, bran, hulls, and meats	968	193.60
Sugarcane	71,340	4,842.75
Sugar	2,296	391.58
Blackstrap	304	241.60
Syrup and molasses	2,590	357.45
Sand, gravel, and crushed stone; paving and road material	317,496	19,050.00
Pulpwood	1,284	87.04
Staves, bolts, or split logs	(1)	222.30
Rosin	809	161.80
Less carload freight	1,375	550.00
Total	400,072	26,420.12

[1] Rate based per car. Handled 114 cars.

301 *Exhibit 9, being statement showing estimate of increased revenue to Missouri Pacific Railway Co. if emergency increases authorized*

Missouri Pacific Railroad Company

Statement showing approximate loss of revenue per year to rail carriers in Louisiana, on Louisiana intrastate traffic destined to points on the Missouri Pacific Railroad, provided the exemptions on intrastate movements, as authorized by the Louisiana Public Service Commission Order No. 897, remain in force

[Figures shown are based on tonnage handled to destinations on the Missouri Pacific Railroad during calendar year 1931]

Commodity	Tons	Through revenue		Loss (max. 10% observed)
		Present rates	Including emer. incr.	
101—Cottonseed, meal, cake, etc	8,199	$26,270.79	$27,910.59	$1,639.80
164—Soya beans	58	176.40	188.00	11.60
350—Gravel and sand	*639,084	513,338.15	551,683.07	38,344.92
351—Crushed stone	109,934	110,026.50	116,609.72	6,583.22
420—Pulpwood	17,298	10,792.27	11,809.21	1,016.94
430—Bolts, stave	1,017	669.33	736.26	66.93
440—Rosin	1,034	4,852.56	5,059.36	206.80
470—Sugar	1,372	10,033.34	10,581.74	548.40
471—Syrup and molasses	420	3,266.43	3,434.43	168.00
472—Molasses, blackstrap	306	1,040.88	1,142.92	102.04
640—Nitrate of soda	7,513	14,868.13	16,182.84	1,314.71
710—Merchandise (l.c.l.)	8,696	115,368.17	118,846.57	3,478.40
Total	794,931	810,702.95	864,184.71	53,481.76

Accounting department, St. Louis, Mo., May 3, 1932.

302 *Exhibit 10, being statement showing estimate of increased revenue of New Orleans & Lower Coast R.R. Co. if emergency increases authorized*

New Orleans & Lower Coast Railroad Company

Statement showing approximate loss of revenue per year to rail carriers in Louisiana, on Louisiana intrastate traffic destined to points on the New Orleans & Lower Coast R.R., provided the exemptions on intrastate movements, as authorized by the Louisiana Public Service Commission Order No. 897, remain in force

[Figures shown are based on tonnage handled to destinations on the N.O. & L.C.R.R. during calendar year 1931]

Commodity	Tons	Through revenue		Through loss
		Present rates	Including emer. incr.	
350—Gravel and sand	12,880	$15,457.66	$16,230.46	$772.80
640—Oyster shells	6,605	7,265.50	7,992.05	726.55
640— Do (see note)	1,909	1,336.30	1,469.93	133.63
710—Merchandise l.c.l.	539	3,873.08	4,088.68	215.60
Total	22,343	$29,713.71	$31,611.49	$1,897.78

NOTE.—N.O. & L.C.R.R. Company material, "revenue," and "loss" figures are based on proportion accruing to connecting lines.

Accounting department, St. Louis, April 29, 1932.

303 *Exhibit 11, being statement showing estimate of increased revenue to Texas & New Orleans Railroad Company if emergency increases authorized*

Witness: J. E. Hines
Exhibit no. 11

I.C.C. Docket 25135

Statement showing commodity, tonnage handled, revenue collected, revenue that would have been collected had the emergency charge applied on the tonnage shown, and loss in revenue due to the nonapplication of the emergency charge, on intrastate traffic destined to points on the Texas and New Orleans railroad in Louisiana based upon tonnage handled during the year 1931

Commodity group number	Description of commodity	Tonnage	Revenue collected	Revenue that would have been collected had emergency charge applied	Loss in revenue
710	Less-carload freight	20,258	263,128.48	271,231.54	8,103.06
101	Cottonseed meal and cake	9,429	23,118.96	25,004.78	1,885.82
141	Onions	113	207.24	227.96	20.72
142	Tomatoes	40	216.00	224.00	8.00
143	Vegetables, fresh, n.o.s.	167	1,032.85	1,066.20	33.35
152	Potatoes, sweet	150	877.03	907.12	30.09
164	Sugarcane	219,222	146,296.33	160,925.96	14,629.63
164	Bagasse	30,147	26,794.55	29,474.01	2,679.46
350	Gravel and sand, other than glass or moulding	758,378	960,145.95	1,005,648.57	45,502.62
351	Stone, broken, ground, or crushed, ranging in size to 200 pounds weight, not including riprap	101,512	146,674.50	152,765.22	6,090.72
392	Soil	30	108.54	110.34	1.80
392	Clay, n.o.i.b.n. in current western classification, except ground clay in bags	75	76.08	85.08	9.00
430	Bolts, stave, heading bolts	390	266.03	292.63	26.60
443	Charcoal	25	84.25	87.25	3.00
470	Sugar, beet or cane	37,338	81,193.53	89,312.88	8,119.35
471	Table syrups and edible molasses	3,483	10,330.42	11,363.46	1,033.04
472	Molasses, blackstrap	20,404	37,574.03	41,331.43	3,757.40
640	Fertilizers, n.o.s., except shells as shown below	17,687	29,553.11	32,508.42	2,955.31
640	Shells, clams, mussel or oyster	162,682	133,272.93	146,600.22	13,327.29
671	Bags, second hand sugar	185	1,082.14	1,156.32	74.18
701	Paper, waste	409	1,520.64	1,672.70	152.06
		1,382,124	1,863,553.59	1,971,996.09	108,442.50

304 *Exhibit 12, Statement showing estimate of increased revenue to Texas & Pacific Railway Company if emergency increases authorized*

I. C. C. Docket no. 25135, part 5
T. & P. Ry. exhibit no. 12
Witness: J. T. Ehricht

Estimate of increased revenue which would result from application of increased rates authorized by order of I.C.C. dated December 5, 1931, in Ex parte No. 103 if applied to commodities handled intrastate in Louisiana to destinations on the Texas & Pacific Railway on which increases were denied by Louisiana Public Service Commission, based upon movements during the year 1931

Commodity	Tons handled, 1931	Estimated revenue increase
Cottonseed meal and products listed in group 101	19,196	$3,660.85
Cabbage	25	4.96
Onions, fresh or dried	24	4.80
Vegetables, fresh, as listed in group 143	10	2.00
Bagasse	4,556	455.57
Sugarcane	300,718	19,354.33
Gravel and sand (except asbestos)	610,677	36,328.97
Stone, broken, ground or crushed	62,000	3,719.36
Limestone, pulverized	30	1.80
Bolts, stave and heading	6,996	366.59
Charcoal, wood	12	1.44
Sugar, raw or refined	47,489	10,872.42
Molasses and syrup (except coloring, flavoring, fruit, malt or medicated)	29,529	5,752.49
Blackstrap molasses	13,484	2,508.06
Fertilizers or fertilizer materials listed in group 640	34,355	4,382.04
Cinders	101	6.06
All l.c.l. freight (except cotton)	11,943	4,777.20
Total	1,141,145	92,198.94

305 *Exhibit 13, being statement showing estimate of increased revenue to Louisiana and Arkansas Railway Company if emergency increases authorized*

Exhibit no. 13
I.C.C. docket no. 25135
Witness: W. F. Craig

Louisiana & Arkansas Railway Company, Accounting Department

RECAPITULATION

Statement showing revenue received from carload shipments of sand, gravel, and crushed stone moving in Louisiana intrastate traffic during the year 1931, destined to points on the Louisiana & Arkansas Railway.

1931	Number of cars	Number of tons	Revenue collected	Revenue that would have been collected had Ex parte 103 increase been applicable	Amount of increase
Jan	390	20,593	$17,649.27	$18,884.85	$1,235.58
Feb	423	20,758	19,067.12	20,312.60	1,245.45
March	290	14,949	12,821.74	13,718.68	896.94
April	405	21,627	15,853.86	17,151.48	1,297.62
May	948	48,825	35,204.22	38,133.72	2,929.50
June	1,437	72,425	51,906.03	56,251.53	4,345.50
July	2,389	122,613	89,342.19	96,698.97	7,356.78
Aug	2,044	103,201	74,115.44	80,307.50	6,192.06
Sept	1,550	82,711	60,626.51	65,589.17	4,962.66
Oct	1,167	62,171	46,261.66	49,991.92	3,730.26
Nov	824	44,331	32,314.86	34,974.72	2,659.86
Dec	332	17,646	12,474.12	13,532.88	1,058.76
	12,199	631,850	$467,637.02	$505,548.02	$37,911.00

Shreveport, La., April 27, 1932.

306 *Statement showing revenue received from carload shipments of sand and gravel moving in Louisiana in intrastate traffic during the year of 1931, destined to points on the Louisiana & Arkansas Railway*

1931	Number of cars	Number of tons	Revenue collected	Revenue that would have been collected had Ex parte 103 increase been applicable	Amount of increase
Jan	322	16,939	$15,088.59	$16,104.93	$1,016.34
Feb	407	19,932	18,404.07	19,599.99	1,195.92
March	289	14,906	12,778.44	13,672.80	894.36
April	291	15,641	11,502.89	12,441.35	938.46
May	729	37,401	27,031.70	29,275.76	2,244.06
June	1,200	60,367	43,077.70	46,699.72	3,622.02
July	1,923	98,318	70,451.90	76,350.98	5,899.08
Aug	1,568	79,746	55,592.28	60,377.04	4,784.76
Sept	1,254	66,820	47,219.79	51,228.99	4,009.20
Oct	848	44,107	31,583.08	34,229.50	2,646.42
Nov	621	33,250	23,137.12	25,132.12	1,995.00
Dec	190	9,847	7,040.21	7,631.03	590.82
	9,652	497,274	$362,907.77	$392,744.21	$29,836.44

Shreveport, La., April 27, 1932.

307 *Statement showing revenue received from carload shipments of crushed stone moving in Louisiana intrastate traffic during the year of 1931, destined to points on the Louisiana & Arkansas Railway*

1931	Number of cars	Number of tons	Revenue collected	Revenue that would have been collected had Ex parte 103 increase been applicable	Amount of increase
Jan	68	3,654	$2,560.68	$2,779.92	$219.24
Feb	16	826	663.05	712.61	49.56
March	1	43	43.30	45.88	2.58
April	114	5,986	4,350.97	4,710.13	359.16
May	219	11,424	8,172.52	8,857.96	685.44
June	237	12,058	8,828.33	9,551.81	723.48
July	466	24,295	18,890.29	20,347.99	1,457.70
Aug	476	23,455	18,523.16	19,930.46	1,407.30
Sept	296	15,891	13,406.72	14,360.18	953.46
Oct	319	18,064	14,678.58	15,762.42	1,083.84
Nov	193	11,081	9,177.74	9,842.60	664.86
Dec	142	7,799	5,433.91	5,901.85	467.94
	2,547	134,576	$104,729.25	$112,803.81	$8,074.56

Shreveport, La., April 27, 1932.

308 *Exhibit 14, being statement showing estimate of increased revenue to Kansas City Southern Railway Company if emergency increases authorized*

The Kansas City Southern Railway Company

Statement showing annual loss in revenue to the carriers due to the non-application by the Louisiana Public Service Commission of Ex parte 103 increase on commodities as follows, based on Louisiana intrastate tonnage handled to destination on this line during year 1931

Commodities	Tonnage	Rates in effect	Rates in effect, including emergency charges	Revenue loss due to nonapplication of emergency charges
Asphalt-coated stone or rock (amiesite), broken, ground, or crushed				
Bagasse				
Bags, sugar, second-hand				
Beans, soya				
Beans, velvet				
Blackstrap molasses	276	$909.23	$1,000.15	$90.92
Bolts, heading				
Bolts, stave				
Building, paving, or road making and roofing materials, as follows: Common shell, whole or crushed	84	134.40	139.44	5.04
Cabbage				
Charcoal				
Chatts				
Chat (mine gravel), whole or crushed				
Cherts				
Cinders				
Clay, fire (except ground clay, in bags, and treated or milled clay)				
Clay, n.o.i.b.n. in current western classification (except ground clay, in bags)				
Cottonseed meal and products listed in group 101	1,249	2,953.59	3,203.39	249.80
Crushed tile and crushed sewer pipe (imperfect hollow tile and sewer pipe, crushed for use instead of crushed stone)				
309 Crushed stone (broken stone ranging in size to 200 pounds weight), including ground limestone, in bulk or in bags, but not including gypsum rock, riprap (irregular shaped rock), in pieces ranging up to 200 pounds weight, as listed in group 351	56,649	$76,334.21	$79,733.15	$3,398.94
Crushed brick or brickbats				
Fertilizer or fertilizer materials as listed in group 640	3,262	6,121.55	6,733.71	612.16
Furnace slag				
Gravel	74,177	70,501.46	74,952.08	4,450.62
Limestone, pulverized				
Molasses	92	304.62	335.08	30.46
Nitrate potash (nitrate of soda potash)				
Onions, fresh or dried				
Paper, waste				
Peas, Austrian winter				
Peas, cow				
Pulpwood				
Rosin, sizing				
Salt cake (crude sulphate of soda)				
Sand (except asbestos sand and silica sand)	32,250	36,852.29	38,787.29	1,935.00
Slag (not pulverized)				
Soil				
Sweetpotatoes	15	75.00	78.00	3.00
Sugarcane				
Sugar, raw or refined	1,671	12,630.72	13,299.12	668.40
Syrup (except coloring, flavoring, fruit, malt, or medicated)	256	2,008.95	2,111.35	102.40
Tomatoes, fresh				
310 Vegetables, fresh, as listed in group 143				
Wood, waste (stumps and refuse woods)	709	$383.10	$421.41	$38.31
All traffic moving on less than carload rates	2,272	30,854.04	31,762.84	908.80
Total	172,962	$240,063.16	$252,557.01	$12,493.85

311 *Exhibit 15, being statement showing estimate of increased revenue to Illinois Central System if emergency increases authorized*

Illinois Central System

Statement showing actual revenue collected and revenue which would accrue from application of emergency rates to Louisiana intrastate traffic for year 1931 on commodities excepted in order 897, issued Feb. 8th, 1932, by Louisiana Public Service Commission

	Illinois Central R.R. and Yazoo & Mississippi Valley deliveries				
Group no.	I.C.C. classification Commodity	Weight (pounds)	Actual revenue collected	Revenue plus emergency charge	Difference between actual revenue collected and revenue plus emergency charge
101	Cottonseed meal and cake	6,072,200	$6,058.00	$6,664.00	$606.00
140	Cabbage	1,897,900	3,323.00	3,513.00	190.00
141	Onions				
142	Tomatoes				
143	Vegetables, fresh, n.o.s.				
152	Vegetables, dried, n.o.s.	24,000	59.00	61.00	2.00
164	Products of agriculture n.o.s.	36,583,200	18,955.00	20,851.00	1,896.00
350	Gravel and sand (other than glass or moulding)	2,439,650,300	765,972.00	839,162.00	73,190.00
351	Stone, broken, ground or crushed	133,869,700	44,700.00	48,716.00	4,016.00
392	Products of mines, n.o.s.	3,061,600	1,536.00	1,690.00	154.00
420	Pulpwood	213,257,600	70,348.00	76,746.00	6,398.00
470 471 472	Sugar (beet or cane), table syrups and edible molasses and molasses, blackstrap, and beet residual	61,135,400	67,751.00	74,526.00	6,775.00
640	Fertilizers n.o.s.	38,000,200	29,567.00	32,524.00	2,957.00
692	Furnace slag				
430	Stave bolts (only)	991,800	994.00	1,054.00	60.00
710	L.c.l.	27,771,200	103,610.00	109,164.00	5,554.00
	Total	2,962,315,100	1,112,873.00	1,214,671.00	101,798.00

5-4-32

312 *Exhibit No. 16, being statement showing valuation of property of Illinois Central Railroad Co. and Yazoo & Mississippi Valley Railroad Co. combined for years 1921–1931, inclusive*

Illinois Central Railroad Co., the Yazoo & Mississippi Valley Railroad Co.—combined

Statement showing property value as per tentative valuation (plus additions and betterments), also investment in road and equipment as per books, together with net railway operating income and rate of return for each of the years ended December 31, 1921 to 1931, both inclusive

YEAR ENDED DECEMBER 31

	1921	1922	1923	1924	1925
Tentative valuation [5]	$382,095,486	$382,095,486	$382,095,486	$382,095,486	$382,095,486
Additions & Betts	107,263,045	125,052,459	175,839,621	204,834,260	237,016,324
Total	489,358,531	507,147,945	557,935,107	586,929,746	619,111,810
Material & Supplies	14,504,193	13,878,359	22,342,600	13,065,510	13,970,706
Total	503,862,724	521,026,304	580,277,707	600,015,256	633,082,516
Net ry. operating inc	18,616,923	26,828,575	24,957,821	28,189,854	30,032,231
Per cent earned	3.69	5.15	4.30	4.70	4.74

	[1] 1926	[2] 1927	1928	1929	[3] 1930	[4] 1931
Tentative valuation [5]	[6] $391,796,513	$398,725,820	$398,725,820	$398,725,820	$398,496,153	$398,381,320
Additions & Betts	[7] 281,231,773	296,711,315	322,352,351	333,562,549	335,107,178	335,413,927
Total	673,028,286	695,437,135	721,078,171	732,288,369	733,603,331	733,795,847
Material & Supplies	13,915,275	13,846,890	10,167,879	10,846,930	9,874,252	8,063,014
Total	686,943,561	709,284,025	731,246,050	743,135,299	743,477,583	741,858,261
Net ry. operating inc	30,279,936	27,275,940	29,011,754	27,844,361	23,690,051	11,943,122
Per cent earned	4.41	3.85	3.97	3.75	3.19	1.61

[1] Includes A. & V., V. S. & P., and L. & M. R. R. Transfer Co. from June 2, 1926.
[2] Includes A. & V., V. S. & P., and L. & M. R. R. Transfer Co. for entire year.
[3] Includes L. & M. R. R. Transfer Co. for four months only.
[4] Excludes L. & M. R. R. Transfer Co.
[5] Excludes material and supplies and working capital, $7,089,891.
[6] Includes 7/12 A. & V., V. S. & P., and L. & M. R. R. Transfer Co., $9,701,027—A. & V., V. S. & P. and L. & M. R. R. Transfer Co. final valuation I.C.C.
[7] Includes 7/12 A. & V., V. S. & P. and L. & M. R.R. Transfer Co. to 12/31/26, $2,516,275.

Statement showing property value as per tentative valuation (plus additions and betterments), also investment in road and equipment as per books, together with net railway operating income and rate of return for each of the years ended December 31, 1921 to 1931, both inclusive—Continued.

YEAR ENDED DECEMBER 31

	1921	1922	1923	1924	1925
Inv. in road & equip	$475,168,628	$492,958,042	$543,745,204	$572,739,843	$604,921,907
Material & supplies	14,504,193	13,878,359	22,342,600	13,085,510	13,970,706
Total	489,672,821	506,836,401	566,087,804	585,825,353	618,892,613
Net ry. operating inc	18,616,923	26,828,575	24,957,821	28,189,854	30,032,231
Per cent earned	3.80	5.29	4.41	4.81	4.85

	[1] 1926	[2] 1927	1928	1929	[3] 1930	[4] 1931
Inv. in road & equip	[5] $658,177,313	$680,113,970	$705,755,006	$716,965,204	$718,604,236	$718,816,583
Material & supplies	13,915,275	13,846,890	10,167,879	10,846,930	9,874,252	8,063,014
Total	672,092,588	693,960,860	715,922,885	727,812,134	728,478,488	726,879,597
Net ry. operating inc	30,279,936	27,275,940	29,011,754	27,344,361	23,690,051	11,943,122
Per cent earned	4.51	3.93	4.05	3.83	3.25	1.64

[1] Includes A. & V., V. S. & P. and L. & M. R. R. Transfer Co. from June 2, 1926.
[2] Includes A. & V., V. S. & P. and L. & M. R. R. Transfer Co. for entire year.
[3] Includes L. & M. R. R. Transfer Co. for four months only.
[4] Excludes L. & M. R. R. Transfer Co.
[5] Includes 7/12 of A. & V., V. S. & P., and L. & M. R. R. Transfer Co., $11,556,232.

313 *Exhibit no. 17, being statement showing property values of Illinois Central Railroad Company and Yazoo & Mississippi Valley Railroad Co. combined as per tentative valuation with operating figures for 3 months ended March 31, 1932*

Illinois Central Railroad Company, the Yazoo & Mississippi Valley Railroad Co.

Statement showing property value as per tentative valuation (plus additions and betterments), also investment in road and equipment as per books, together with net railway operating income and rate of return for the 3 months ended March 31, 1932

	3 mos. ended March 31, 1932		3 mos. ended March 31, 1932
Tentative valuation [1]	$398,381,320	Investment in road and equipment	$717,560,822
Additions and betterments	334,158,166	Material and supplies	8,284,508
Total	732,539,486	Total	725,845,330
Material and supplies	8,284,508	Net railway operating income	3,332,508
Total	740,823,994	Per cent earned	[2] 1.84
Net railway operating income	3,332,508		
Percent earned	[2] 1.80		

[1] Excludes material and supplies and working capital, $7,089,891.
[2] Annual basis.

314 *Exhibit no. 18, being statement of revenue and expenses of Illinois Central system for 3 months ended March 31, 1932, compared with like figures for same period for 3 previous years*

Illinois Central system

Statement of revenues and expenses for the 3 months ended March 31, 1932, compared with the same period for 1931, 1930, 1929

	1932	1931	1930	1929
Ry. operating revenues	23,504,603	29,926,200	40,359,211	45,209,122
Decrease		6,421,597	16,854,608	21,704,519
Percent decrease		21.5	41.8	48.0
Ry. operating expenses:				
Maintenance of way and structures	1,590,211	3,649,732	4,930,219	5,147,572
Decrease		2,059,521	3,340,008	3,557,361
Percent decrease		56.4	67.7	69.1
Maintenance of equipment	4,539,133	7,002,735	8,914,463	9,730,128
Decrease		2,463,602	4,375,330	5,190,995
Percent decrease		35.2	49.1	53.3
Traffic	735,146	893,947	977,546	933,609
Decrease		158,801	242,400	198,463
Percent decrease		17.8	24.8	21.3
Transportation	9,459,996	12,647,412	15,375,355	16,822,065
Decrease		3,187,416	5,915,359	7,362,069
Percent decrease		25.2	38.5	43.8
All other operating expenses	1,281,445	1,481,165	1,562,250	1,600,004
Decrease		199,720	280,805	318,559
Percent decrease		13.5	18.0	19.9
Total ry. operating expenses	17,605,931	25,674,991	31,780,833	34,233,378
Decrease		8,069,060	14,153,902	16,627,447
Percent decrease		31.4	44.6	48.6
Net revenue from ry. operations	5,898,672	4,251,209	8,599,378	10,975,744
Decrease		Inc. 1,647,463	2,700,706	5,077,072
Percent decrease		Inc. 38.8	31.4	46.3
Railway tax accruals	2,081,750	2,453,791	2,864,460	3,244,547
Decrease		372,041	782,710	1,162,797
Percent decrease		15.2	27.3	35.8
Net railway operating income	3,309,570	1,096,853	5,357,191	7,293,582
Decrease		Inc. 2,212,717	2,047,621	3,984,012
Percent decrease		Inc. 201.7	38.2	54.6
Gross income	3,693,887	1,492,115	5,967,407	7,896,495
Decrease		Inc. 2,201,772	2,273,520	4,202,608
Percent decrease		Inc. 147.6	38.1	53.2
Deductions from gross income	4,534,008	4,476,357	4,733,873	4,722,638
Decrease		Inc. 57,651	199,865	188,630
Percent decrease		Inc. 1.3	4.2	4.0
Net income	Def. 840,121	Def. 2,984,242	1,233,534	3,173,857
Decrease		Inc. 2,144,121	2,073,655	4,013,978
Percent decrease		Inc. 71.8		

315–347 [Omitted.]

348 *Exhibit No. 20*

Arkansas & Louisiana-Missouri Railway Co.

Statement showing entire line income account and other statistics for the years 1929 and 1930 and the ten months January 1 to October 31, 1931

	1929	1930	10 months Jan. 1 to Oct. 31, 1931
Average miles of road operated	85.14	85.14	85.14
Operating revenues:			
Freight	$379,568.26	$234,911.19	$147,389.93
Passenger	1,530.25	1,093.43	689.02
Mail			
Express			
All other	14,808.72	10,961.98	4,082.28
Total	395,907.23	246,996.60	152,161.23
Operating expenses:			
Maintenance of way and structures	110,410.47	51,527.50	30,710.27
Maintenance of equipment	31,637.64	23,643.02	14,595.10
Traffic	11,684.97	10,881.17	8,944.20
Transportation	71,023.16	58,093.32	39,162.01
Miscellaneous			
General	41,054.30	37,064.79	23,118.76
Transportation for Investment—Cr.			
Total	$265,810.54	$181,209.80	$116,530.34
Net revenues from railway operations	130,096.69	65,756.80	35,630.89
Taxes	26,099.17	19,830.08	14,600.00
Uncollectible railway revenues	28.52	39.80	17.48
Hire of equipment—Net dr. or cr.	[1] 32,463.22	[1] 18,015.54	[1] 14,143.45
Joint facility rents—Net dr. or cr.	[1] 11,042.93	[1] 15,128.81	[1] 11,656.45
Total taxes, etc.	[1] 69,633.84	[1] 53,014.23	[1] 40,417.38
Net railway operating income	60,462.85	12,742.57	[1] 4,786.49
Rate of return based on book investment, cash, and material & supplies as of beginning of year	173,242.11	172,195.86	141,460.95
All other income	10,234.65	13,270.43	9,976.22
All other income deductions:			
Interest on funded debt			
Interest on unfunded debt		5.64	3.90
Other income deductions	12.37		24.00
Net income (deficit)	[1] 102,556.98	[1] 146,188.50	[1] 136,299.12
Book investment [2] as of beginning of year:			
Road & equipment (accts. 701 & 702)	2,820,428.17	2,803,937.58	2,325,764.50
Cash (acct. 708)	59,932.11	58,944.91	16,775.10
Material and supplies (acct. 716)	7,008.30	7,048.57	15,142.90
	2,887,368.58	2,869,931.06	2,357,682.50
Tons one mile of revenue freight	5,285,881	3,893,575	3,327,332
Passengers one mile	42,745	30,894	19,331

[1] Red.

[2] The book investment must be the investment in the property for which the income is included. In computing rate of return for the 11 months use 11/12ths of the investment as of December 31st, 1930.

349 Rock Island Lines

(The Chicago, Rock Island and Pacific Railway Company; The Chicago, Rock Island and Gulf Railway Company)

Statement showing entire line income account and other statistics for the years 1929 and 1930 and the 11 months January 1st to November 30, 1931

	1929	1930	Eleven months January 1 to Nov. 30, 1931
Average miles of road operated	8,110.11	8,183.39	8,276.93
Operating revenues:			
Freight	$113,597,037.33	$96,211,917.14	$74,750,516.22
Passenger	19,388,168.36	15,295,583.41	9,858,870.85
Mail	4,319,739.96	3,047,832.17	2,594,157.90
Express	3,597,804.66	2,781,862.40	1,815,890.67
All other	6,818,812.05	5,742,714.61	3,842,004.87
Total	$147,721,562.36	123,079,909.82	92,861,440.51
Operating expenses:			
Maintenance of way and structures	$20,250,848.46	$15,319,812.55	$10,345,634.06
Maintenance of equipment	27,294,255.72	21,224,498.25	16,303,823.98
Traffic	3,469,702.57	3,240,043.38	2,778,987.88
Transportation	52,145,966.82	45,447,900.09	34,748,326.99
Miscellaneous	1,949,550.29	1,663,793.04	1,215,934.20
General	4,360,447.84	4,375,243.55	3,966,467.93
Transportation for investment—Cr.	*915,386.74	*719,532.71	*304,423.43
Total	$108,555,384.96	$90,551,758.15	$69,054,751.51
Net revenues from railway operations	39,166,177.40	$32,528,151.67	$23,806,689.00
Taxes	$8,212,087.10	$7,198,000.00	$6,005,000.00
Uncollectible railway revenues	32,396.44	33,273.96	19,115.08
Hire of equipment—Net debit	4,867,141.10	4,462,121.66	3,613,828.56
Joint facility rents—Net debit	1,205,644.01	1,086,949.48	1,079,726.10
Total taxes, etc.	$14,317,268.65	$12,780,345.10	$10,717,669.74
Net railway operating income	$24,848,908.75	$19,747,806.57	$13,089,019.26
Rate of return based on book investment, cash, and material & supplies as of beginning of year	5.31	4.06	2.78
All other income	$1,282,360.42	$1,375,258.51	$1,028,599.88
All other income deductions:			
Interest on funded debt	11,655,369.06	12,885,755.86	12,721,161.97
Interest on unfunded debt	135,026.89	241,748.15	167,270.22
Other income deductions	333,552.35	295,332.34	275,266.90
Net income	$14,007,320.87	$7,700,228.73	953,920.05
Book investment [1] as of beginning of year:			
Road & equipment (accts. 701 & 702)	$451,985,797.08	$472,348,922.56	$501,107,158.37
Cash (acct. 708)	7,361,228.26	5,322,433.06	4,585,736.80
Material & supplies (acct. 716)	8,850,907.07	8,841,307.97	8,326,172.47
Total	$468,197,932.41	$486,512,663.59	$514,019,067.64
Eleven twelfths of value as of Dec. 31, 1930			$471,184,145.33
Tons one mile of revenue freight	9,917,502,335	8,481,810,873	[2] 6,663,181,873
Passengers one mile	682,789,510	562,543,645	[2] 392,590,165

[1] The book investment must be the investment in the property for which the income is included. In computing rate of return for the 11 months use 11/12ths of the investment as of December 31st, 1930.

[2] Ten months actual, one month estimated.

350 Gulf, Mobile and Northern Railroad Company; New Orleans Great Northern Railroad Company

Statement showing entire line income account and other statistics for the years 1929 and 1930, and the eleven months January 1 to Nov. 30, 1931

	1929	1930	11 months Jan. 1 to November 30, 1931
Average miles of road operated	1,010.61	998.59	998.59
Operating revenues:			
Freight	$9,854,159.59	$7,915,213.90	$5,475,586.62
Passenger	541,706.96	412,024.95	241,785.17
Mail	176,988.82	115,699.38	108,623.62
Express	105,291.36	66,212.74	36,646.57
All other	215,921.07	166,751.41	120,781.66
Total	$10,893,977.80	$8,675,902.38	$5,983,423.64
Operating expenses:			
Maintenance of way and structures	1,602,188.96	1,346,888.26	742,676.82
Maintenance of equipment	1,724,476.01	1,441,104.56	973,227.87
Traffic	562,746.99	516,261.32	425,078.63
Transportation	3,247,230.76	2,841,535.15	2,048,551.22
Miscellaneous	3,999.17	3,487.77	825.39
General	502,732.98	428,302.59	336,604.64
Transportation for investment—Cr	745.75	2,395.87	
Total	$7,642,629.12	$6,575,183.78	$4,526,964.57
Net revenues from railway operations	3,251,348.68	2,100,718.60	1,456,459.07
Taxes	714,380.68	491,874.32	388,049.31
Uncollectible railway revenues	2,297.80	860.48	1,280.12
Hire of equipment—Net dr	511,656.98	457,062.35	266,912.29
Joint facility rents—Net dr	237,351.73	264,819.30	241,860.74
Total, taxes, etc	$1,465,687.19	$1,214,616.45	$898,102.46
Net railway operating income	1,785,661.49	886,102.15	558,356.61
Rate of return based on book investment, cash, and material & supplies as of beginning of year	3.24%	1.63%	.983%
All other income	48,388.35	110,143.88	121,565.47
All other income deductions:			
Interest on funded debt	777,000.00	863,690.67	879,450.00
Interest on unfunded debt	33,876.03	19,920.09	5,681.06
Other income deductions	34,461.60	36,215.96	4,328.50
Net income	$988,712.21	$76,419.31	Def. 209,537.48
Book investment [1] as of beginning of year:			
Road & equipment (accts. 701 & 702)	$52,958,325.39	$52,777,675.23	$53,707,941.92
Cash (acct. 708)	1,412,665.89	905,808.32	2,265,884.44
Material & supplies (acct. 716)	764,981.36	621,949.27	851,130.60
Total	$55,135,972.64	$54,305,432.82	$56,824,956.96
Tons one mile of revenue freight	835,494,075	747,082,896	[2] 474,658,875
Passengers one mile	19,868,032	15,932,166	[2] 11,008,710

[1] The book investment must be the investment in the property for which the income is included. In computing rate of return for the 11 months use 11/12ths of the investment as of December 31st, 1930.
[2] 10 months. November not available.

351 Illinois Central Railroad Company

Statement showing entire line income account and other statistics for the years 1929 and 1930, and the eleven months January 1 to November 30, 1931

	1929	1930	11 months, Jan. 1 to Nov. 30, 1931
Average miles of road operated	5,027.65	5,018.80	5,018.81
Operating revenues:			
Freight	$120,543,326	$97,951,868	$72,781,465
Passenger	20,711,253	16,807,419	11,336,870
Mail	2,497,266	2,382,555	2,003,336
Express	3,968,724	3,630,490	2,354,039
All other	5,463,239	4,920,881	3,581,269
Total	153,183,808	125,093,213	92,056,979
Operating expenses:			
Maintenance of way and structures	19,100,798	13,684,713	11,137,307
Maintenance of equipment	35,965,886	27,076,787	20,168,629
Traffic	3,168,909	3,126,650	2,571,437
Transportation	54,147,781	47,167,017	36,569,771
Miscellaneous	1,187,399	1,027,289	727,198
General	4,350,891	4,318,842	3,953,390
Transportation for investment—Cr	[1] 89,041	[1] 105,795	[1] 60,495
Total	117,832,623	96,295,503	75,067,237
Net revenues from railway operations	35,351,185	28,797,710	16,988,742
Taxes	10,529,134	7,324,342	5,797,983
Uncollectible railway revenues	43,008	29,436	16,648
Hire of equipment—Net dr	345,720	570,597	893,888
Joint facility rents—Net	[1] 114,857	128,070	120,518
Total, taxes, etc	10,803,005	7,796,305	6,829,037
Net railway operating income	24,548,180	21,001,405	10,160,705
Rate of return based on book investment, cash and material & supplies as of beginning of year	3.92%	3.30%	1.74%
All other income	6,961,007	5,580,910	3,411,482
All other income deductions:			
Interest on funded debt	16,020,447	15,784,576	14,413,366
Interest on unfunded debt	[1] 56,067	176,501	59,451
Other income deductions	2,024,424	1,331,648	1,190,392
Net income	13,520,383	9,289,590	[1] 2,091,022
Book investment as of beginning of year:			
Road & equipment (accts. 701 & 702)	608,088,963	618,970,616	620,836,627
Cash (acct. 708)	8,108,202	7,514,771	8,638,186
Material & supplies (acct. 716)	9,253,000	10,105,602	9,088,888
Total	625,450,165	636,590,989	638,563,701
Tons one mile of revenue freight (thous)	13,864,065	11,081,281	7,973,122
Passengers one mile	820,558	720,671	530,076

[1] Red.

VP-Acctg.,
1-4-32 f.

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352 The Kansas City Southern Railway Company (including Texarkana and Fort Smith Railway Company)

Statement showing entire line income account and other statistics for the years 1929 and 1930, and the eleven months January 1 to November 30, 1931

	1929	1930	11 months, Jan 1 to Nov. 30, 1931
Average miles of road operated	883.23	883.22	883.20
Operating revenues:			
Freight	$18,428,962.04	$16,290,103.76	$11,225,784.38
Passenger	1,143,976.70	854,456.59	493,511.37
Mail	427,441.07	276,596.25	230,875.10
Express	472,935.57	327,454.25	200,320.69
All other	1,504,906.57	1,348,082.94	1,071,823.36
Total	$21,978,221.95	$19,096,693.79	$13,222,314.90
Operating expenses:			
Maintenance of way & structures	$2,595,479.77	$2,261,224.91	$1,248,834.03
Maintenance of equipment	3,433,248.13	3,123,845.00	2,062,938.53
Traffic	853,015.27	847,797.04	638,213.61
Transportation	6,179,335.17	5,703,045.96	4,000,053.55
Miscellaneous	60,006.15	96,399.46	65,984.22
General	1,166,472.46	1,099,699.19	833,739.74
Transportation for investment—Cr	[1] 12,141.92	[1] 11,812.47	[1] 35,994.01
Total	$14,275,415.03	$13,120,199.09	$8,813,769.67
Net revenue from railway operations	$7,702,806.92	$5,976,494.70	$4,408,545.23
Taxes	$1,446,457.70	$1,170,082.58	$1,119,855.63
Uncollectible railway revenues	11,805.47	3,494.21	2,434.60
Hire of equipment—Net Dr	996,507.71	956,475.86	600,702.64
Joint facility rent—Net Dr	99,114.00	75,664.23	68,592.76
Total taxes, etc	2,553,884.88	$2,205,716.88	$1,791,585.63
Net railway operating income	$5,148,922.04	$3,770,777.82	$2,616,959.60
Rate of return based on book investment, cash and material supplies as of beginning of year	4.42%	3.14%	2.26%
All other income	$1,044,542.93	$735,897.18	$533,019.99
All other income deductions:			
Interest on funded debt	2,585,319.76	2,731,167.52	2,484,705.17
Interest on unfunded debt	32,307.50	92,529.57	15,972.70
Other income deductions	210,618.98	216,367.88	83,109.84
Net income	$3,365,218.73	$1,466,610.03	$566,191.88
Book investment as of beginning of year:			
Road equipment (accts. 701 & 702)	$11,567,261.95	$115,852,219.00	$116,841,586.82
Cash (acct. 708)	2,959,798.62	2,316,040.53	2,202,489.42
Material supplies (acct. 716)	1,956,955.33	2,064,522.62	2,053,930.54
Total	$116,484,015.90	$120,232,782.15	$121,098,006.78
Tons 1 mile of revenue freight	1,802,140,820	1,708,914,625	[2] 1,030,754,401
Passengers 1 mile	39,338,853	31,174,223	[2] 17,187,627

[1] Red.
[2] January 1 to October 31, 1931.

Statement showing entire line income account and other statistics for the years 1929 and 1930, and the eleven months January 1 to November 30, 1931

	1929	1930	11 months, Jan. 1 to Nov. 30 1931
Average miles of road operated	5,176.13	5,251.18	5,266.03
Operating revenues:			
Freight	$107,640,549.39	$93,401,690.93	$67,887,860.31
Passenger	15,473,110.89	11,637,477.91	7,413,074.80
Mail	2,454,569.33	2,366,788.13	1,948,749.62
Express	3,055,674.98	2,222,824.[illegible]	1,457,802.59
All other	3,432,078.73	2,812,202.[illegible]	2,222,332.44
Total	$132,055,983.32	$112,440,98[illegible].10	80,929,819.76
Operating expenses:			
Maintenance of way and structures	$21,118,138.21	17,104,678.60	[illegible],254,746.47
Maintenance of equipment	30,406,965.94	27,389,403.67	17,911,904.34
Traffic	2,958,995.55	2,904,555.19	2,415,431.65
Transportation	45,009,439.62	40,238,410.39	30,339,866.56
Miscellaneous	726,227.11	668,133.62	502,771.17
General	4,481,294.39	4,402,501.11	4,075,256.36
Transportation for investment—Cr	154,396.59	213,845.32	90,334.59
Total	$104,546,674.23	92,493,837.35	67,409,641.96
Net revenue from railway operations	$27,509,309.09	19,947,147.75	13,520,177.80
Taxes	$7,566,457.15	6,233,951.36	5,103,702.11
Uncollectible rai way revenues	23,789.69	16,421.86	18,825.75
Hire of equipment—Net Dr	1,358,398.93	1,095,531.07	970,832.85
Joint facility rent—Net Dr	449,241.41	785,382.38	632,317.80
Total taxes, etc	6,681,089.32	5,940,234.53	4,784,012.81
Net railway operating income	20,828,219.77	14,006,913.22	8,736,164.99
Rate of return based on book investment, cash, and material and supplies as of beginning of year	4.45%	2.82%	1.93%
All other income	4,006,041.95	3,722,858.51	2,187,199.96
All other income deductions:			
Interest on funded debt	10,634,582.09	10,556,912.53	9,557,911.11
Interest on unfunded debt	30,321.80	90,249.35	20,742.70
Other income deductions	442,815.49	476,527.70	362,388.90
Net income	13,726,542.34	6,606,082.15	982,322.24
Book investment [1] as of beginning of year:			
Road and equipment (accts. 701 and 702)	[2] 435,020,589.00	[2] 446,551,765.00	[2] 416,410,652.00
Investment not included in accts. 701 and 702, but income from which is included net railway operating income	6,330,037.00	17,671,511.00	16,219,829.00
Cash (acct. 708)	15,585,185.65	20,233,769.58	10,899,723.64
Material and supplies (acct. 716)	11,214,918.95	12,102,593.42	10,054,099.70
Total	468,150,730.60	496,559,639.00	453,584,295.34
Tons one mile of revenue freight	12,580,521,098	10,990,409,512	7,929,169,000
Passengers one mile	482,542,463	374,247,738	[3] 252,269,693

[1] The book investment must be the investment in the property for which the income is included. In computing rate of return for the 11 months use 11/12ths of the investment as of December 31, 1930.
[2] Does not include lines owned not operated, leased to other companies.
[3] November 1931 estimated.

Office of Comptroller, Louisville, Ky., January 6th, 1932.

354 Louisiana & Arkansas Railway Company

Statement showing entire line income account and other statistics for the years 1929 and 1930, and the eleven months, January 1 to November 30, 1931

	1929	1930	11 months, Jan. 1 to Nov. 30, 1931
Average miles of road operated	637.61	617.47	608.46
Operating revenues:			
Freight	$7,261,469.41	$6,441,491.45	$5,020,653.91
Passenger	275,110.43	220,258.27	142,986.98
Mail	84,437.36	77,396.84	66,825.69
Express	56,268.15	46,203.28	27,969.42
All other	189,379.80	195,257.27	207,372.41
Total	$7,866,665.15	$6,980,607.11	$5,459,808.41
Operating expenses:			
Maintenance of way & structures	$1,254,022.23	1,039,075.56	713,939.64
Maintenance of equipment	1,213,565.31	1,040,343.64	729,772.54
Traffic	269,460.33	266,501.22	230,403.98
Transportation	2,323,038.60	2,065,944.58	1,415,119.76
Miscellaneous	17,778.06	17,456.72	8,594.18
General	283,109.34	315,247.35	249,855.35
Transportation for investment—Cr	[1] 46,546.12	[1] 17,167.08	[1] 4,719.88
Total	$5,314,427.75	4,727,401.99	3,342,965.63
Net revenue from railway operations	$2,552,237.40	2,253,205.12	2,116,842.78
Taxes	$606,053.91	555,011.63	530,207.13
Uncollectible railway revenues	2,653.44	9,046.82	1,970.26
Hire of equipment—Net Dr	657,508.66	475,948.41	253,185.08
Joint facility rent—Net Cr	57,817.03	51,188.16	45,028.10
Total taxes, etc	1,208,398.98	988,818.70	740,354.37
Net Railway operating income	1,343,838.42	1,264,386.42	1,376,508.41
Rate of return based on book investment, cash and material & supplies as of beginning of year	3.15%	3.00%	3.52%
All other income	288,137.17	115,434.07	86,940.39
All other income deductions:			
Interest on funded debt	625,770.00	645,097.77	598,968.34
Interest on unfunded debt	164,169.74	140,928.86	132,585.39
Other income deductions	15,461.73	23,502.21	23,043.09
Net income	826,574.12	570,291.65	708,851.98
Book investment [2] as of beginning of year:			
Road & equipment (accts. 701 & 702)	$40,180,024.00	$40,134,844.00	$41,373,254.00
Cash (acct. 708)	1,674,204.00	1,071,533.00	531,703.00
Material & supplies (acct. 716)	709,461.00	911,743.00	755,824.00
Total	$42,644,689.00	42,118,120.00	42,680,781.00
Tons one mile of revenue freight	558,213,124	506,309,841	344,058,746
Passengers one mile	8,229,124	7,000,482	4,436,730

[2] The book investment must be the investment in the property for which the income is included. In computing rate of return for the 11 months use 11/12ths of the investment as of December 31, 1930.

355 The Louisiana & North West Railroad Co.

Statement showing entire line income account and other statistics for the years 1929 and 1930, and the eleven months, January 1 to November 30, 1931

	1929	1930	11 months Jan. 1 to Nov. 30, 1931
Average miles of road operated	99.20	99.20	99.20
Operating revenues:			
Freight	$678,224.57	501,212.59	372,852.88
Passenger	21,402.16	13,658.29	7,472.12
Mail	38,253.07	16,041.69	10,833.16
Express	9,660.08	7,370.46	3,695.26
All other	9,590.32	8,502.20	3,379.31
Total	$757,130.21	546.785.23	398,232.73
Operating expenses:			
Maintenance of way & structures	$120,944.23	91,274.37	57,481.87
Maintenance of equipment	59,770.92	58,136.66	43,994.41
Traffic	11,361.75	9,737.21	9,291.08
Transportation	165,973.70	153,529.71	119,490.53
Miscellaneous		1,832.77	
General	76,613.91	57,389.84	98,679.31
Transportation for investment—Cr.	[1] 2,101.10		[1] 91.20
Total	$435,330.80	371,899.98	328,846.00
Net revenue from railway operations	$321,799.41	174,885.25	69,386.73
Taxes	[1] $18,750.43	38,000.44	34,925.00
Uncollectible railway revenues			
Hire of equipment—Net Dr.	48,815.95	34,714.72	29,970.62
Joint facility rent—Net Dr.	791.67	793.13	755.07
Total taxes	68,358.05	73,508.29	65,650.69
Net railway operating income	253,441.36	101,376.96	3,736.04
Rate of return based on book investment, cash and material & supplies as of beginning of year	.054 plus	.021 plus	?
All other income	31,063.33	23,515.63	15,084.10
All other income deductions:			
Interest on funded debt	108,450.00	108,450.00	99,412.47
Interest on unfunded debt	694.86	165.50	2,722.88
Other income deductions	17,639.20	4,378.18	40,502.59
Net income	157,720.63	11,898.91	[1] 123,817.80
Book investment as of beginning of year:			
Road & equipment (accts. 701 & 702)	$4,560,773.44	4,712,337.77	4,702,071.10
Cash (acct. 708)	80,424.76	109,053.15	95,371.38
Material & supplies (acct. 716)			
Total	$4,641,198.20	4,821,390.92	4,797,442.48
Tons one mile of revenue freight	11,978,599	11,140,832	10,460,400
Passengers one mile	605,871	379,734	212,057

[1] Item of taxes for 1929 should be about $39,000.00, but refund of about $20,400.00. Income tax reduces this amount to $18,750.43.

356 Missouri Pacific Railroad Company

Statement showing entire line income account and other statistics for the years 1929 and 1930, and the eleven months, January 1st to November 30, 1931

	1929	1930	11 months, Jan. 1 to Nov. 30, 1931
Average miles of road operated	7,458.23	7,451.23	7,444.90
Operating revenues:			
Freight	$114,345,150.52	$99,779,356.46	$74,801,699.74
Passenger	13,023,292.99	10,210,815.19	6,644,574.61
Mail	[1] 4,492,168.93	3,374,115.11	2,838,150.71
Express	2,786,704.81	2,357,666.94	1,479,373.60
All other	5,160,597.30	4,465,735.44	3,464,219.29
Total	$139,807,914.55	$210,187,689.14	$89,228,017.95
Operating expenses:			
Maintenance of way & structures	$24,297,017.12	$17,928,953.07	$10,921,409.90
Maintenance of equipment	23,057,775.68	20,851,200.11	15,188,822.57
Traffic	3,924,526.80	3,532,230.72	2,997,940.84
Transportation expenses	46,863,222.13	42,519,953.15	32,417,448.94
Miscellaneous	1,280,301.79	1,110,033.17	796,928.28
General	4,700,990.38	4,545,357.03	3,662,031.27
Transportation for investment—Cr	1,220,392.74	1,476,180.45	585,292.62
Total	$102,903,441.16	$89,009,546.85	$65,399,289.18
Net revenue from railway operation	$36,904,473.39	$31,178,142.29	$23,828,728.77
Taxes	$6,250,444.49	$5,428,990.21	$3,721,528.51
Uncollectible railway revenues	38,429.84	33,664.20	21,127.61
Hire of equipment—Dr	4,650,354.16	3,495,697.96	2,598,939.70
Joint facility rents—Net Dr	1,411,059.41	1,429,753.95	1,298,318.45
Total taxes, etc	$12,350,287.90	$10,388,106.32	$7,639,914.27
Net railway operating income	$24,554,185.49	$20,790,035.97	$16,188,814.50
Rate of return based on book investment, cash, and material & supplies as of beginning of year	4.75	3.80	3.70
All other income	$5,447,204.84	$4,952,458.58	$4,863,198.78
All other income deductions:			
Interest on funded debt	17,437,456.12	18,623,873.26	[3] 18,326,473.22
Interest on unfunded debt	68,939.37	154,900.05	344,358.59
Other income deductions	277,240.47	250,110.45	270,607.36
Net income	$12,217,763.37	$6,713,610.79	$2,110,574.11
Book investment [2] as of beginning of year:			
Road & equipment (accts. 701 and 702)	$500,421,181.06	$529,671,084.92	$510,431,229.55
Cash (acct. 708)	10,139,241.54	3,933,214.89	1,962,870.91
Material and supplies (acct. 716)	11,335,749.45	13,262,002.57	8,633,296.43
Total	$521,896,172.05	$546,866,302.38	$521,027,396.89
Tons one mile of revenue freight	11,051,806,038	10,363,948,532	[3] 7,087,850,751
Passengers one mile	417,331,684	330,128,902	[3] 208,007,063

[1] Includes $1,303,207.52 back mail pay.
[2] The book investment must be the investment in the property for which the income is included. In computing rate of return for the 11 months use 11/12ths of the investment as of December 31, 1930.
[3] 10 months of 1931.

357 New Iberia & Northern Railroad Company

Statement showing entire line income account and other statistics for the years 1929 and 1930, and the eleven months January 1 to November 30, 1931

	1929	1930	11 months, Jan. 1 to Nov. 30, 1931
Average miles of road operated	115.56	115.56	115.18
Operating revenues:			
Freight	383,018	378,215	269,721
Passenger	15		6
Mail	189		
Express	449	206	83
All other	3,798	2,732	1,283
Total	387,469	381,153	271,093
Operating expenses:			
Maintenance of way & structures	184,806	141,115	88,170
Maintenance of equipment	38,831	23,042	18,177
Traffic	14,373	13,503	11,650
Transportation expenses	142,133	140,077	108,022
Miscellaneous			
General	20,145	19,505	16,427
Transportation for investment—Cr	286	450	19
Total	400,002	336,792	242,427
Net revenue from railway operation	[1] 12,533	44,361	28,666
Taxes	40,428	39,977	37,400
Uncollectible railway revenues	875	53	38
Hire of equipment—Dr	103,200	111,788	83,257
Joint facility rents—Net Dr	185	127	144
Total taxes, etc	144,688	151,945	120,839
Net railway operating income	[1] 157,221	[1] 107,584	[1] 92,173
Rate of return based on book investment, cash and material & supplies as of beginning of year	4.92%	4.69%	3.02%
All other income	1,220	1,346	2,215
All other income deductions:			
Interest on funded debt	100,000	100,000	91,667
Interest on unfunded debt	37	175	24
Other income deductions	5		19
Net income	[1] 256,043	[1] 206,413	[1] 181,668
Book investment as of beginning of year:			
Road & equipment (accts. 701 and 702)	3,412,199	3,424,041	3,440,174
Cash (acct. 708)	29,623	28,004	28,114
Material and supplies (acct. 716)			
Total	3,441,822	3,452,045	3,468,288
Tons one mile of revenue freight	20,703,693	20,688,719	15,770,389
Passengers one mile	552	128	156

[1] Red.

358 New Orleans, Texas & Mexico Railway Company

Statement showing entire line income account and other statistics for the years 1929 and 1930, and the eleven months, January 1 to November 30, 1931

	1929	1930	11 months, Jan. 1 to Nov. 30, 1931
Average miles of road operated	191.22	191.22	191.22
Operating revenues:			
Freight	2,564,624	2,605,210	1,811,600
Passenger	335,869	282,389	164,582
Mail	53,260	38,614	33,490
Express	30,559	46,140	24,253
All other	38,264	48,892	41,524
Total	3,022,576	3,021,225	2,075,449
Operating expenses:			
Maintenance of way & structures	419,205	443,950	275,410
Maintenance of equipment	661,206	691,392	506,436
Traffic	108,551	107,410	92,475
Transportation expenses	822,757	772,550	596,033
Miscellaneous	18,858	17,512	12,774
General	146,931	151,021	126,978
Transportation for investment—Cr.	3,433	9,502	946
Total	2,174,075	2,174,333	1,609,160
Net revenue from railway operation	848,501	846,892	446,289
Taxes	245,239	248,643	228,802
Uncollectible railway revenues	1,674	1,215	1,316
Hire of equipment—Dr.	Cr. 382,250	Cr. 408,640	Cr. 366,792
Joint facility rents—Net Dr.	Cr. 38,626	Dr. 6,030	Dr. 11,784
Total taxes, etc.	[1] 173,963	[1] 152,752	[1] 124,890
Net railway operating income	1,022,464	999,644	591,179
Rate of return based on book investment, cash and material & supplies as of beginning of year			
All other income	2,433,040	2,314,894	5,390,733
All other income deductions:			
Interest on funded debt	2,314,353	2,396,451	2,283,278
Interest on unfunded debt	1,885	58,647	-8,043
Other income deductions	10,070	13,684	12,627
Net income	1,149,196	845,756	3,677,964
Book investment as of beginning of year:			
Road & equipment (accts. 701 and 702)	19,376	19,891,805	19,930,570
Cash (acct. 768)	342,971	244,514	354,726
Material and supplies (acct. 716)	1,075,325	1,200,537	1,073,631
Total	20,794,592	21,336,856	21,358,927
Tons one mile of revenue freight	228,461,331	226,779,347	144,260,808
Passengers one mile	11,317,368	9,486,945	5,752,488

[1] Red.

359 New Orleans & Lower Coast Railroad

Statement showing entire line income account and other statistics for the years 1929 and 1930, and the 11 months, January 1 to November 30, 1931

	1929	1930	11 months, Jan. 1 to Nov. 30, 1931
Average miles of road operated	59.65	59.65	59.65
Operating revenues:			
Freight	72,887.49	57,817.42	43,277.41
Passenger	35,195.40	10,081.84	250.11
Mail	[1] 12,589.54	2,152.60	396.40
Express			
All other	69,802.37	81,539.81	75,064.46
Total	190,474.80	151,591.87	118,988.38
Operating expenses:			
Maintenance of way and structures	104,852.90	102,909.46	67,787.27
Maintenance of equipment	41,324.02	36,397.97	22,516.31
Traffic	1,098.18	1,457.37	999.86
Transportation expenses	102,977.53	88,335.88	68,724.11
Miscellaneous			
General	3,553.29	4,510.53	3,128.58
Transportation for investment—Cr.			917.72
Total	253,805.92	233,611.21	162,208.41
Net revenue from railway operation	[2] 63,331.12	[2] 82,019.34	[2] 43,220.03
Taxes	10,112.76	9,810.90	11,000.00
Uncollectible railway revenues	12.77	8.46	3.67
Hire of equipment—Dr.	21,316.08	9,086.98	17,065.68
Joint facility rents—Net Dr.			
Total taxes, etc.	31,441.61	18,906.34	28,069.35
Net railway operating income	[2] 94,772.73	[2] 100,925.68	[2] 71,289.38
Rate of return based on book investment, cash and material and supplies as of beginning of year			
All other income	257.95	396.80	905.01
All other income deductions:			
Interest on funded debt			
Interest on unfunded debt			
Other income deductions	25.00	309.76	
Net income	[2] 94,539.78	[2] 100,838.64	[2] 70,384.37
Book investment [3] as of beginning of year:			
Road and equipment (accts. 701 and 702)	881,066.41	1,131,739.92	1,066,574.61
Cash (acct. 708)	12,431.43	15,283.22	21,212.51
Material and supplies (acct. 716)	12,949.73	18,022.18	17,329.72
Total	906,447.57	1,165,045.32	1,105,116.74
Tons one mile of revenue freight	1,797,652	1,510,494	[4]
Passengers one mile	1,332,823	363,628	[4]

[1] Includes $8,154.68 back mail pay.
[2] Red.
[3] The book investment must be the investment in the property for which the income is included. In computing rate of return for the 11 months, use 11/12ths of the investment as of Dec. 31, 1930.
[4] Not available.

360 North Louisiana and Gulf Railroad Co.

Statement showing income account and other statistics for the years 1929 and 1930, and the eleven months, January 1 to November 30, 1931

	1929	1930	11 months, Jan. 1 to Nov. 30, 1931
Average miles of road operated	25.7	25.7	25.7
Operating revenues:			
Freight	104,170.61	95,289.52	90,002.03
Passengers	49.91	47.18	27.27
Mail	2,516.53		
All other	329.00	304.00	835.00
Total	107,066.05	95,640.70	90,864.80
Operating expenses:			
Maintenance of ways and structures	36,987.47	28,342.97	32,260.16
Maintenance of equipment	11,565.21	12,801.13	9,843.12
Traffic expense	2,891.09	2,856.24	2,697.83
Transportation expense	22,257.47	21,974.33	15,677.74
General	14,437.12	10,996.45	10,670.45
Total	88,136.36	76,971.12	71,149.30
Net revenue from railway operations	18,929.69	18,669.58	19,715.50
Taxes	7,511.73	6,760.76	6,197.40
Total operating income	11,417.96	11,908.82	13,518.10
Other deductions:			
Interest and discount			599.44
Hire of equipment	9,325.36	10,596.50	9,972.00
Joint facility rent	300.00	300.00	275.00
	9,625.36	10,896.50	10,846.44
Net railway operating income	1,792.60	1,012.32	2,671.66
Rate of return based on book investment, cash and material and supplies as of beginning of year	.376%	.264%	.682%
Book investment as of beginning of year:			
Road & equipment (accts. 701 and 702)	371,842.76	371,309.26	371,917.58
Cash	None	6,141.22	14,921.21
Material and supplies	4,377.60	4,656.63	4,722.85
Total	476,220.36	382,107.11	391,561.64

361 Sibley, Lake Bisteneau & Southern Railway Co. (or System)

Statement showing entire line income account and other statistics for the years 1929 and 1930, and the eleven months, January 1 to November 30, 1931

	1929	1930	11 months, Jan. 1 to Nov. 30, 1931
Average miles of road operated	27.1	27.1	27.1
Operating revenues:			
Freight	66,461.91	60,882.79	33,627.01
Passengers	2,431.61	1,465.81	272.25
Mail	7,207.14	3,339.12	3,040.41
Express			
All other	1,170.69	239.86	290.80
Total	77,271.35	65,927.58	37,220.47
Operating expenses:			
Maintenance of ways and structures	21,862.16	17,347.60	11,365.45
Maintenance of equipment	12,882.75	8,155.59	4,799.80
Traffic	4,054.39	3,707.95	2,653.63
Transportation	14,989.37	12,582.23	7,675.01
Miscellaneous			
General	9,040.31	8,133.98	5,734.72
Transportation for investment—Cr			
Total	62,828.98	49,927.35	32,228.61
Net revenue from railway operations	14,442.37	16,000.23	4,991.86
Taxes	8,069.87	5,067.38	4,445.42
Uncollectible railway revenue		12.24	39.00
Hire of equipment—Net dr. or cr	5,925.51	5,660.79	1,495.62
Joint facility rents—Net dr	135.08	135.12	123.78
Total taxes, etc	12,130.46	10,875.53	6,103.82
Net railway operating income	2,311.91	5,124.70	Def. 1,111.96
Rate of return based on book investment, cash, and material and supplies as of beginning of year	.77%	1.77%	Def.
All other income	263.00	287.70	Def. 164.00
All other income deductions—			
Interest on funded debts			
Interest on unfunded debts	1,800.00	1,800.00	1,650.00
Other income deductions			
Net income	774.91	3,612.40	Def. 2,925.96
Book investment [1] as of beginning of year:			
Road & equipment (accts. 701 and 702), cash (acct. 703)	283,030.64	275,996.48	295,373.42
Material and supplies (acct. 716)	17,055.94	13,427.89	8,389.42
Total	300,086.58	289,424.37	303,762.84
Tons one mile of revenue freight	48,583	29,312	5,391
Passengers one mile			

[1] The book investment must be the investment in the property for which the income is included. In computing rate of return for the 11 months use 11/12ths of the investment as of December 31, 1930.

362 St. Louis Southwestern Railway Lines

Statement showing entire line income account and other statistics for the years 1929 and 1930, and the eleven months, January 1 to November 30, 1931

	1929	1930	11 months, Jan. 1 to Nov. 30, 1931
Average miles of road operated	1,754.52	1,843.93	1,913.53
Operating revenues:			
Freight	$22,915,951.87	$19,406,275.37	$15,130,736.12
Passengers	1,202,970.73	865,140.70	401,074.93
Mail	581,024.57	396,551.79	285,942.30
Express	485,310.54	357,904.18	165,353.71
All other	744,306.85	855,490.04	585,195.91
Total	$25,929,564.56	$21,881,362.08	$16,568,302.97
Operating expenses:			
Maintenance of ways and structures	$5,177,657.85	$3,351,655.27	$1,840,928.00
Maintenance of equipment	4,217,588.96	3,426,363.55	2,424,438.67
Traffic	1,218,679.99	1,318,814.93	1,032,378.14
Transportation	8,066,863.16	7,693,937.70	5,493,113.57
Miscellaneous	302,806.62	267,508.47	196,884.34
General	1,212,457.02	1,103,783.01	885,464.63
Transportation for investment—Cr	81,285.05	217,682.72	42,937.79
Total	$20,114,768.55	$16,944,380.21	$11,740,269.56
Net revenue from railway operations	$5,814,796.01	$4,936,981.87	$4,828,033.41
Taxes	$1,171,372.81	$1,071,845.41	$984,672.28
Uncollectible railway revenue	5,090.75	2,749.21	4,653.74
Hire of equipment—Net dr. or cr	727,919.41	1,250,321.84	1,171,941.88
Joint facility rents—Net dr	374,220.98	392,737.30	360,397.83
Total taxes, etc	$2,278,603.95	$2,717,653.76	$2,521,665.73
Net railway operating income	$3,536,192.06	$2,219,328.11	$2,306,367.68
Rate of return based on book investment, cash, and material and supplies as of beginning of year	2.68%	1.67%	1.84%
All other income	203,039.57	183,196.89	124,915.73
All other income deductions:—			
Interest on funded debts	$2,587,055.00	$2,606,395.90	$2,380,183.32
Interest on unfunded debts	22,154.16	219,464.31	350,361.57
Other income deductions	25,179.76	22,146.15	18,700.92
Net income	$1,104,842.71	Def. $445,481.36	Def. $317,962.40
Book investment [1] as of beginning of year:			
Road & equipment (accts. 701 & 702)	$124,114,896.58	$127,825,853.02	$121,640,659.36
Cash (acct. 703)	3,041,268.18	713,517.09	433,333.55
Material and supplies (acct. 716)	4,851,592.46	4,476,685.72	3,534,408.24
Total	$132,007,757.22	$133,016,055.83	$125,608,401.15
Tons one mile of revenue freight	-1,686,142,000	1,639,949,000	[2] 1,129,365,000
Passengers one miles	36,244,000	27,082,000	[2] 12,325,000

[1] The book investment must be the investment in the property for which the income is included. In computing rate of return for the 11 months use 11/12ths of the investment as of December 31, 1930.
[2] 10 months 1931.

363 Southern Railway System

Statement showing entire line income account and other statistics for the years 1929 and 1930, and the eleven months, January 1 to November 30, 1931

	1929	1930	11 months, Jan. 1 to Nov. 30, 1931
Average miles of road operated	8,052.69	8,051.45	8,051.06
Operating revenues:			
Freight	$142,370,780.06	$119,997,911.02	$93,223,422.30
Passengers	28,422,260.95	21,736,132.49	14,140,046.49
Mail	6,978,391.93	4,735,877.84	4,154,051.45
Express	3,362,768.21	2,521,984.96	1,651,260.83
All other	8,477,244.77	7,129,579.83	5,235,660.04
Total	$189,611,445.92	$156,121,486.14	$118,404,441.11
Operating expenses:			
Maintenance of ways and structures	$29,841,062.64	$22,999,517.96	$19,403,349.37
Maintenance of equipment	35,905,420.32	29,996,107.84	25,023,557.57
Traffic	3,873,521.84	3,558,270.91	2,994,308.59
Transportation	60,381,464.18	53,848,756.84	43,466,344.76
Miscellaneous	1,340,965.98	1,211,564.35	870,403.31
General	5,815,221.50	5,512,015.86	4,718,289.29
Transportation for investment—Cr	147,863.09	54,337.13	36,227.03
Total	$137,010,803.37	$117,071,895.73	$96,440,025.86
Net revenue from railway operations	$52,600,642.55	$39,049,590.41	$21,964,415.25
Taxes	$12,362,834.96	$11,084,477.43	$9,035,541.51
Uncollectible railway revenue	34,601.11	16,851.79	19,294.77
Hire of equipment—Debit	860,582.70	1,095,532.80	1,752,741.63
Joint facility rents—Debit	955,263.73	936,682.75	930,830.06
Net railway operating income	$38,387,360.05	$25,916,045.64	$10,226,007.28
Rate of return based on book investment, cash, and material and supplies as of beginning of year	4.69%	3.17%	1.36%[1]
Book investment as of beginning of year:			
Road equipment (accts. 701 and 702)	$783,323,027	$786,418,970	$799,533,809
Cash (acct. 703)	22,673,397	21,540,904	14,581,529
Material and supplies (acct. 716)	12,532,678	9,348,869	7,996,512
Total	$818,529,102	$817,308,743	$822,111,850
Tons one mile of revenue freight	11,644,204,000	9,875,732,000	7,655,785,448
Passengers one mile	861,606,840	661,870,476	450,742,512

[1] Based on 11/12ths of investment.

Comptroller's office, Washington, D. C., January 7th, 1932.

364 Texas and New Orleans R.R. (or System)[1]

Statement showing entire line income account and other statistics for the years 1929 and 1930, and the 11 months, January 1 to November 30, 1931

	1929	1930	11 months, Jan. 1 to Nov. 30, 1931
Average miles of road operated	4,729.72	4,710.19	4,7[illegible]
Operating revenues:			
Freight	57,729,558	48,858,741	33,662,967
Passenger	10,333,293	8,231,023	5,073,362
Mail	1,652,065	1,148,187	980,453
Express	1,797,023	1,480,672	954,435
All other	2,816,025	2,386,289	2,618,900
Total	74,327,964	62,104,912	43,290,117
Operating expenses:			
Maintenance of way and structures	11,480,231	9,529,262	6,837,013
Maintenance of equipment	14,456,232	11,395,377	8,188,745
Traffic	2,132,449	2,066,864	1,704,381
Transportation	23,586,633	20,361,694	15,292,874
Miscellaneous	546,879	441,282	323,535
General	3,121,084	3,061,358	2,555,608
Transportation for investment—Cr	[2] 418,717	[2] 322,348	[2] 158,791
Total	54,904,791	46,533,489	34,743,365
Net revenue from railway operations	19,423,173	15,571,423	8,546,752
Taxes	4,175,486	3,911,508	2,878,023
Uncollectible railway revenues	44,007	22,709	28,546
Hire of equipment—Net dr. or cr	3,631,712	3,314,511	2,775,456
Joint facility rents—Net dr. or cr	[2] 124,723	[2] 102,781	[2] 122,261
Total taxes, etc	7,726,482	7,145,947	4,559,764
Net railway operating income	11,696,691	8,425,476	2,986,988
Rate of return based on book investment, cash, and material & supplies as of beginning of year	3.93	2.80	.98
All other income	7,890,128	7,916,435	7,144,873
All other income deductions:			
Interest on funded debts	4,129,134	4,084,696	3,723,844
Interest on unfunded debts	10,452	18,534	10,762
Other income deductions	6,754,855	6,719,129	6,052,194
Net income	8,692,378	5,519,552	345,061
Book investment [3] as of beginning of year:			
Road and equipment (accts. 701 & 702)	287,538,698	290,873,396	293,624,801
Cash (acct. 708)	2,859,880	3,582,301	4,136,608
Material and supplies (acct. 716)	7,157,823	6,978,085	7,510,211
Total	297,556,401	301,433,782	305,271,620
Tons one mile of revenue freight	4,386,980,355	3,704,216,728	2,633,648,000
Passengers one mile	351,816,898	282,245,468	176,903,823

[1] Includes returns for the Texas and New Orleans Railroad Company and all properties leased to and operated by it.

[2] Red.

[3] The book investment must be the investment in the property for which the income is included. In computing rate of return for the 11 months use 11/12ths of the investment as of December 31, 1930.

NOTE.—Discard cents and adjust units of dollars to accord with footings.

365 Texas & Pacific R.R.

Statement showing entire line income account and other statistics for the years 1929 and 1930, and the eleven months, January 1 to November 30, 1931

	1929	1930	11 months, Jan. 1 to Nov. 30, 1931
Average miles of road operated	1,994.85	1,955.62	1,951.41
Operating revenues:			
Freight	$36,829,630	$30,286,655	$22,446,011
Passenger	5,442,679	4,415,831	3,015,121
Mail	1,279,207	881,547	767,294
Express	1,145,907	917,529	611,970
All other	999,011	1,040,739	1,057,407
Total	$45,696,434	$37,542,301	$27,897,803
Operating expenses:			
Maintenance of way and structures	$7,395,147	$5,638,322	$3,355,321
Maintenance of equipment	7,801,173	6,226,466	4,557,016
Traffic	1,086,196	1,051,306	872,073
Transportation	14,144,602	12,005,451	8,813,618
Miscellaneous	377,397	342,020	253,382
General	1,484,020	1,505,670	1,270,618
Transportation for investment—Cr	438,814	347,956	70,186
Total	$31,849,721	$26,421,279	$19,051,842
Net revenue from railway operations	$13,846,713	$11,121,022	$8,845,961
Taxes	$2,243,609	$1,735,692	$1,492,000
Uncollectible railway revenues	16,848	11,307	8,330
Hire or equipment—Net dr. or cr	2,693,175	2,103,731	1,813,397
Joint facility rents—Net dr. or cr	114,698	34,605	110,208
Total taxes, etc	$5,068,330	$3,885,335	$3,423,935
Net railway Operating Income	$8,778,383	$7,235,687	$5,422,026
Rate of return based on book investment, cash, and material and supplies as of beginning of year	4.95%	3.72%	3.06%
All other income	1,113,607	507,047	452,463
All other income deductions:			
Interest on funded debts	3,620,135	3,918,577	3,874,190
Interest on unfunded debts	62,103	107,879	37,173
Other income deductions	79,678	64,087	83,984
Net income	$6,130,074	$3,652,191	$1,879,142
Book investment[1] as of beginning of year:			
Road and equipment (accts. 701 & 702)	$169,337,470	$180,042,982	$187,712,064
Cash (acct. 708)	2,351,475	8,556,063	1,078,691
Material and supplies (acct. 716)	5,571,001	6,091,229	4,504,888
	$177,259,946	$194,690,274	$193,295,643
Tons one mile of revenue freight (thousands)	3,190,003	2,736,625	[2] 1,788,943
Passengers one mile	168,077,954	142,671,560	[2] 99,393,724

[1] The book investment must be the investment in the property for which the income is included. In computing rate of return for the 11 months use 11/12ths of the investment as of December 31, 1930.

[2] 10 months only.

NOTE.—Discard cents and adjust units of dollars to accord with footings

366 Tremont & Gulf Railway Company

Statement showing entire line income accounts and other statistics for the years 1929 and 1930, and the eleven months, Jan. 1 to Nov. 30, 1931

	1929	1930	11 months, Jan. 1 to Nov. 30, 1931
Average miles of road operated	70.55		
Operating revenues:			
Freight	$444,453.22	$370,734.78	$291,020.38
Passenger	1,488.45	1,070.45	497.98
Mail	13,228.45	5,813.10	5,327.08
Express	395.58	478.34	84.28
All other	6,721.37	7,118.14	5,206.66
Total	466,287.07	385,214.81	302,136.38
Operating expenses:			
Maintenance of way and structures	146,688.77	132,220.26	121,801.46
Maintenance of equipment	60,795.53	52,100.74	46,908.76
Traffic	11,071.17	12,837.80	11,267.37
Transportation	87,239.37	79,849.51	57,980.12
Miscellaneous			
General	45,307.30	26,327.59	20,253.25
Transportation for investment—Cr.	[1] 2,060.64		
Total	349,041.50	303,335.90	258,210.96
Net revenue from railway operations	117,245.57	81,878.91	43,925.42
Taxes	29,843.58	31,540.47	28,912.07
Uncollectible railway revenues	334.89		230.13
Hire of equipment—Net dr. or cr.	Dr. 21,591.71	Dr. 16,244.12	Dr. 13,607.26
Joint facility rents—Net dr. or cr.	Cr. 4,353.58	Cr. 3,471.09	Cr. 1,578.96
Total taxes, etc.	Dr. 47,416.60	Dr. 44,313.50	Dr. 41,170.50
Net railway operating income	69,828.97	37,565.41	2,754.92
Rate of return based on book investment, cash, and material & supplies as of beginning of year	.0296	.0152	.0012
All other income	1,699.63	916.75	253.20
All other income deductions:			
Interest on funded debts	50,708.31	45,088.04	38,392.99
Interest on unfunded debts	272.69	2.42	2.04
Other income deductions	5,245.06	4,637.77	4,252.52
Net income	Cr. 15,302.54	Dr. 11,246.07	Dr. 39,639.43
Book investment [2] as of beginning of year:			
Road and equipment (accts. 701 & 702)	2,287,156.06	2,413,129.55	2,212,035.43
Cash (acct. 708)	26,198.11	15,881.94	14,558.39
Material and supplies (acct. 716)	42,626.12	33,330.50	30,552.94
Total	2,355,980.29	2,462,341.99	2,257,146.76
Tons one mile of revenue freight	101,691	62,468	
Passengers one mile	532	424	

The Yazoo & Mississippi Valley Railroad Co.

Statement showing entire line income account and other statistics for the years 1929 and 1930, and the eleven months January 1 to November 30, 1931

	1929	1930	11 months Jan. 1 to Nov. 30, 1931
Average miles of road operated	1,765.23	1,704.07	1,682.61
Operating revenues:			
Freight	$22,663,628	$19,280,254	$14,144,079
Passenger	3,365,329	2,577,845	1,345,626
Mail	534,680	518,443	433,539
Express	565,108	449,608	227,506
All other	663,629	536,542	342,923
Total	27,792,375	23,362,692	16,493,673
Operating expenses:			
Maintenance of way and structures	4,663,480	3,328,931	2,559,984
Maintenance of equipment	5,194,300	3,781,759	2,797,719
Traffic	526,696	534,422	433,415
Transportation	10,364,336	9,043,783	6,754,076
Miscellaneous	101,002	90,169	52,140
General	787,147	777,674	746,854
Transportation for investment—Cr	[1] 39,513	[1] 39,043	[1] 26,528
Total	21,597,448	17,517,695	13,317,660
Net revenue from railway operations	6,194,926	5,844,997	3,176,013
Taxes	1,964,376	1,862,940	1,531,092
Uncollectible railway revenues	10,900	14,488	31,041
Hire of equipment—Net dr. or cr	1,610,368	1,776,835	1,723,995
Joint facility rents—Net dr. or cr	[1] 686,989	[1] 497,912	[1] 352,952
Total taxes, etc	2,898,745	3,156,351	2,933,176
Net railway operating income	3,296,181	2,688,646	242,837
Rate of return based on book investment, cash, and material & supplies as of beginning of year	3.33%	2.72%	0.27%
All other income	192,422	153,439	74,599
All other income deductions:			
Interest on funded debts	2,492,366	2,001,519	1,575,414
Interest on unfunded debts	12,629	12,898	6,611
Other income deductions	907,322	827,668	823,999
Net income	76,286		[1] 2,088,588
Book investment [2] as of beginning of year:			
Road and equipment (accts. 701 & 702)	97,666,043	97,994,588	97,603,731
Cash (acct. 708)	271,635	271,601	190,123
Material and supplies (acct. 716)	914,879	741,328	785,364
	98,852,557	99,007,517	98,579,218
Tons one mile of revenue freight (thous.)	1,603,305	1,486,950	1,064,036
Passengers one mile (thous.)	101,369	78,933	44,540

[1] Red.

VP—Acctg., 1-4-32 f.

171926—33——17

Exhibit 23

Witness, H. B. Henderlite

I.C.C. Docket 25135

Increases in intrastate freight rates and charges

Statement indicating number of incompleted construction projects showing project number, parish location, and approximate amount of aggregates (sand, gravel, crushed stone, and shells) required to complete same, sepdrated as to projects east and west of the Mississippi River as of April 1, 1932

EAST OF THE MISSISSIPPI RIVER

Project no.	Parish location	No. tons of aggregates required to complete, basis 2,000 lbs.
P-42	Iberville	1,040
57-A-1	East Feliciana	278
768-C	St. Helena	6,565
797-A	Iberville-Ascension	7,637
800-B	Washington	249
910-A	Livingston	5,868
3601-A	St. John-St. Charles	9,181
3601-B-3	Jefferson-St. Charles	3,780
6107	Tangipahoa-St. Tammany	100
6208	Tangipahoa	5,970
4150	Livingston	30,169
4152	Livingston	6,895
6106	St. Tammany	9,692
6108	St. Tammany	15,500
3602	Jefferson	1,938
792-A	Ascension	386
	Total	105,248

WEST OF THE MISSISSIPPI RIVER

816-A	Avoyelles	7,120
1801-B	Bossier	3,673
2203	Catahoula-Concordia	58,364
2452	Concordia	13,061
2700	East Carroll	421
4404	Natchitoches	1,199
4406	Natchitoches	44,150
4408	Natchitoches	1,060
4409	Natchitoches	2,003
4412	Natchitoches-Red River	971
5901	St. Martin-St. Landry	13,133
1004	Acadia-St. Landry	700
1407	Avoyelles	1,300
1602	Jackson-Bienville	800
1907	Beauregard-Calcasieu	6,983
2205	Catahoula	5,210
3807	Lafourche	3,500
4906	Vernon-Rapides	10,500
6300	Tensas	30,000
7306	Winn	4,300
6302	Tensas-Madison	10,446
738-A	LaSalle-Winn	31,709
1505	Calcasieu-Beauregard	6,650
1605	Bienville	5,619
1705	Bossier	13,334
1801	Caddo-Bossier	25,719
2301	Webster-Claiborne	10,892
2500	Desoto	14,703
2506	Desoto	16,872
2508	Desoto	2,688
3300	Iberville	21,903
3702	Lafayette-St. Martin	3,949

Statement indicating number of incompleted construction projects showing project number, parish location, and approximate amount of aggregates (sand, gravel, crushed stone, and shells) required to complete same, separated as to projects east and west of the Mississippi River as of April 1, 1932—Continued

WEST OF THE MISSISSIPPI RIVER

Project no.	Parish location	No. tons of aggregates required to complete, basis 2,000 lbs.
4002	Lincoln-Union	61,895
4410	Natchitoches-Rapides	3,298
371 4607	Ouachita	16,797
4804	Pointe Coupee	5,987
4806	Pointe Coupee	15,480
4912	Rapides	36,025
4914	Rapides	4,320
5005	Red River	12,783
5006	Red River	30,769
5203	Sabine	14,170
5206	Sabine-Vernon	34,808
6002	St. Mary	8,758
6505	Union-Claiborne	3,535
6603	Vermillion	25,572
6605	Vermillion	16,964
7001	West Baton Rouge-Iberville	14,715
7101	West Carroll-Richland	19,449
7302	Winn	14,134
1402	Avoyelles	855
3403	Jackson	980
4411	Natchitoches	520
4800	Pointe Coupee-St. Landry	37,724
4905	Rapides	53,600
6004	St. Mary	50,515
6500	Ouachita-Union	2,183
A-38	West Baton Rouge	3,298
A-41	West Baton Rouge	1,323
A-42	West Baton Rouge	2,214
637-B	Desoto-Natchitoches	2,740
691-H-1	Franklin	4,158
745-A	Plaquemine	10,846
748-A	Vermillion	1,202
749-A	Caldwell	8,720
766-B	West Carroll	5,824
777-A	Red River	601
779-A	Franklin-Richland	7,421
790-A	St. Martin-St. Landry	8,338
791-A	St. Martin	2,490
801-A	Sabine	3,915
802-A	St. Landry	5,202
805-A	Franklin	5,873
814-A	Concordia	5,009
825-A	Madison	4,953
825-B	Madison	5,087
826-A	Tensas	6,009
3301	Iberville-Ascension	1,747
3503	Jefferson Davis	904
4805	Pointe Coupee	1,107
4807	St. Landry-Pointe Coupee	3,123
5400	St. Charles	265
5802-A	St. Landry	70
5807	St. Landry-Evangeline-Acadia	303
6405	Terrebonne-Lafourche	236
6450	Terrebonne	87
6507	Union	6,755
	Total	969,488

RECAPITULATION

No projects:	*No. tons*
16 (East of the river)	105,248
87 (West of the river)	969,488
103 (Total for State)	1,074,736

372 I.C.C. DOCKET 25135

Exhibit No. 24

Witness Hinderlite

Louisiana Public Service Commission

Order No. 928

New Orleans and Northeastern Railroad Company et al., Ex part No. 960

In re rates on sand, gravel, chert, etc., between points in Louisiana east of the Mississippi River.

In this proceeding carriers by railroad operating in Louisiana east of the Mississippi River seek an order authorizing the publication of rates on said, gravel, crushed stones, etc., between points east of the river on the same basis as is now applicable intrastate and interstate in the so-called southern and Mississippi Valley territories. The scale was prescribed for interstate application by the Interstate Commerce Commission in its docket 17517 et al.

The State commissions of Georgia and South Carolina declined to adopt the bases for intrastate application. Carriers in those States then sought and secured from the Interstate Commerce Commission an order under the thirteenth section of the Transportation Act authorizing them to apply the scales intrastate in those jurisdictions. Appropriate orders issued. They were contested by the regulatory bodies of Georgia and South Carolina and were finally affirmed by the Supreme Court of the United States.

A similar thirteenth section proceeding was filed against this Commission, but the carriers deferred pressing it until the litigation arising in other States had been disposed of.

Following final affirmance of the orders of the Interstate Commerce Commission this Commission set the application of the carriers for hearing, and such hearing was had, at New Orleans on April 19th, 1932.

Due notice of the hearing was given all persons at interest. It is conceded by witnesses for the Louisiana Highway Commission, the largest individual purchaser and shipper of this material in the territory, by witnesses for parochial governments and for the producers, that some readjustment of the rates in Louisiana east of the Mississippi River is inevitable. In view of the action of the Supreme Court in the Georgia and South Carolina cases we are of the same opinion.

373 The carriers urge the adoption of the I.C.C. docket 17517 scales without modification on the ground that such action will remove the discrimination against interstate shippers and interstate commerce now alleged to exist.

The rates in effect in Louisiana west of the Mississippi River at this time are those found reasonable and prescribed for interstate application in southwestern territory by the Interstate Commerce Commission in its docket 17,000, part 11. There are only minor and inconsequential differences in the docket 17517 scales and the docket 17,000, part 11, scales.

In an order this day handed down in case no. 1814 on the docket of this Commission, entitled "Louisiana Highway Commission v. Arkansas and Louisiana Missouri Railway Company et al", we have required the application of the docket 17,000, part 11, rates to shipments of sand, gravel, shells, crushed stone, etc., between points in Louisiana west of the Mississippi River on the one hand and points in Louisiana east of the east bank crossing points on the Mississippi River on the other.

In that order we discuss in more detail the desirability of and need for a uniform basis of rates on these materials between all points in the State of Louisiana. We conclude, that the docket 17,000 part 11, rates will best serve this purpose and at the same time effectively remove the discrimination alleged by the applicants to now exist in the territory under consideration.

The Louisiana Highway Commission requests that whatever rates we prescribe shall not be made applicable to shipments of material necessary to complete the sixteen highway contracts in territory east of the Mississippi River on which work has been temporarily suspended. A list of those contracts and the amount of material required to complete them was filed in the record as exhibit no. 12. This has been supplemented since the hearing with a statement showing the location of the several projects and other information. The contracts upon which we are asked to protect existing rates and the estimated tonnage of aggregates required for their completion are attached hereto as appendices. Appendix A lists projects to which material has actually moved. Appendix B lists the projects for which none of the material here involved has as yet moved.

The freight rates and charges on the aggregate used in such contracts are paid by the Louisiana Highway Commission,
374 and if the rates herein authorized for general application are made effective on the materials required for the completion of these projects its will increase the cost of the work beyond the contract price, and the loss will have to be absorbed by either the highway commission or the contractor.

Under both the Interstate Commerce Commission Act (section 22) and the rules and regulations of this Commission (General Order No. 2 as amended), railroads are authorized to serve the State at reduced rates; and in this proceeding the equities of the situation require that the rates which prevailed at the time these contracts for State highway work were entered into should be applied on the materials, transported by railroad, needed for the completion of the projected listed.

We believe it just, reasonable, and proper to protect these outstanding contracts, provided the time of their completion is not unduly delayed. It is stated by witnesses for the highway commission that, so far as may now be determined, these projects should be completed by July 1st, 1933. Accordingly, we shall provide in this order that the rates which are here authorizing for general application in Louisiana east of the Mississippi River shall not apply on the materials covered herein shipped to and for used on said projects. On all such shipments the intrastate rates now in effect shall continue to be applied until July 1st, 1933, except that, should any of these contracts be cancelled and work thereon permanently stopped, the application of the reduced rates to such projects, if any, shall automatically cease.

It is therefore

Ordered, That, for the transportation of sand, gravel, shells, crushed stone, and other related commodities, as hereinafter more fully described, in carloads, between points in the State of Louisiana east of the Mississippi River, the following rates, rules, and minimum weights shall hereafter apply:

Commodity Description

Sand (except asbestos sand and silica sand), gravel, crushed stone (broken stone ranging in size up to 200 pounds weight), including ground limestone, in bulk or in bags, but not including gypsum rock, riprap (irregular shaped rock in pieces ranging up to 200 pounds weight); clay, fire (except ground clay in bags, and treated or milled fire clay); clay, n.o.i.b.n., in current western
375 classification (except ground clay in bags). Building, paving or road-making, and roofing materials, as follows: Common shells, whole or crushed; crushed tile and crushed sewer pipe (imperfect hollow tile and sewer pipe crushed for use instead of crushed stone); soil; cinders; crushed brick or bricktats; chat (mine gravel), whole or crushed; and slag, not pulverized; in bulk in straight or mixed carloads.

Distance scales of rates, in cents per ton of 2,000 pounds

Distances	Single-line rate	Joint-line rate	Distances	Single-line rate	Joint-line rate
10 miles and under	50	65	130 miles and over 120	115	130
20 miles and over 10	56	71	140 miles and over 130	120	135
30 miles and over 20	62	77	150 miles and over 140	125	140
40 miles and over 30	68	83	160 miles and over 150	130	140
50 miles and over 40	74	89	170 miles and over 160	135	145
60 miles and over 50	80	95	180 miles and over 170	140	150
70 miles and over 60	85	100	190 miles and over 180	145	155
80 miles and over 70	90	105	200 miles and over 190	150	160
90 miles and over 80	95	110	230 miles and over 200	160	170
100 miles and over 90	100	115	260 miles and over 230	170	180
110 miles and over 100	105	120	290 miles and over 260	180	190
120 miles and over 110	110	125	320 miles and over 290	190	200

376 Minimum weight: The minimum carload weight shall be 90 percent of the marked capacity of the car, except that where car is loaded to full visible capacity actual weight shall govern.

Method of computing distances: In computing distances, the shortest single-line routes over which carload traffic can be moved without transfer of lading shall be used in connection with the single-line scale, and the shortest joint route over which carload traffic can be moved without transfer of lading shall be used in connection with the joint-line scale. Lines under common management and control shall be considered as single line in applying the rates herein prescribed.

It is further

Ordered, That, for the transportation of the materials herein described to the Louisiana Highway Commission projects listed in appendix A and appendix B hereto, the rates, charges, and rules prescribed in this order shall not become effective until July 1st, 1933; and the rates, charges, and rules now in effect for the transportation of said materials between points in Louisiana east of the Mississippi River shall continue to be applied to shipments for use on said projects, provided, however, that should any of the contracts covering said projects be cancelled or annulled prior to July 1st, 1933, the reduced rates herein authorized and required to be protected as to said projects shall automatically cease.

All rates, orders, authorities, tariffs, rules, and regulations in conflict herewith are hereby declared cancelled and annulled upon the effective date of this order.

Effective June 1st, 1932.

(Signed) FRANCIS WILLIAMS,
Chairman.
" DUDLEY J. LEBLANC,
Commissioner.
" HARVEY G. FIELDS,
Commissioner.

By order of the Commission.

Baton Rouge, Louisiana, April 30, 1932.

(Seal.)

Sgd. HENRY JASTERMSKI, *Secretary.*

Attest: A true copy.

Sgd. HENRY JASTREMSKI, *Secretary.*

377 377–379 [Omitted.]

380 *Exhibit No. 25, being order of Arkansas Railroad Commission dated February 4, 1931, with regard to certain switching allowances*

At a regular meeting of the Commission in its offices, New State Capitol Bldg., Little Rock, February 4, 1931

Present: Ed Harper, chairman; Clay S. Henderson, commissioner; Reece Caudle, commissioner

Case 797

WHELAN SPRINGS GRAVEL CO., WHELAN SPRINGS, ARK.; KIRTEN Gravel Co., Benton, Ark.; Cross County Gravel Co., Cherry Valley, Ark.; Benton Gravel Co., Benton, Ark.; Newark Sand & Gravel Co., New Ark, Ark., complainants

vs.

MISSOURI PACIFIC RAILROAD COMPANY, DEFENDANT

ORDER

The complainants operate gravel and sand pits adjacent to the Missouri Pacific Railroad. The distance from the Missouri Pacific to the pits range from one quarter of a mile to one and one quarter miles. The complainants operate their own engines for the purpose of shifting empty and loaded cars within their plant facilities and also transporting of the empty cars from the connection with the Missouri Pacific Railroad to the plants and the handling of the loaded cars back to delivery point with the Missouri Pacific Railroad. The complainants are seeking to be reimbursed to the extent of $3.60 per loaded car for this service, which they claim the carrier is obligated to perform. This case came on for hearing November 20th, 1930, and subsequent dates.

The record is not clear as to how much of the service is plant facility at the pits and how much is service that should be or could be performed by the Missouri Pacific Railroad. The complainants testified as to the average cost for performing this service, which ranges from $3.04 to $4.07 per car. The record is not clear as to how much of this average cost accrues in plant facility operation which the Missouri Pacific Railroad would not be required to perform. The Commission being well and sufficiently advised and after due consideration of the evidence introduced in this case,

It is ordered, That the Missouri Pacific Railroad Company shall either perform the service of delivering empty cars to the gravel pits of complainants and haul the loaded cars from the pits or pay to the

complainatnts the sum of $2.50 per car for each loaded car handled, to become effective on or before Feb. 10th, 1931.

381 It is further ordered, That the Commission retain jurisdiction of the matter and parties herein involved for such further order or orders as may be deemed necessary.

By order of the Commission.

GRADY HAYS, *Secretary.*

Dated Little Rock, Arkansas, February 4, 1931.

382 *Exhibit 26, being authority of Louisiana Public Service Commission to Illinois Central Railroad Co. permitting certain reduced rates on sand and gravel east of the Mississippi River*

State of Louisiana

(Emblem)

Louisiana Public Service Commission

Francis Williams,
Chairman, New Orleans.
Dudley J. LeBlanc,
Abbeville, La.
Harvey G. Fields,
Farmerville, La.
James L. Helm,
Secretary.

Refer to File

Exhibit No. 26
Witness, Stein

SEPTEMBER 11, 1931.

L.P.S.C. Authority No. 4419-R

Gravel, carload, from Roseland, Louisiana, to Montpelier, Pine Grove, and Grangeville, La.

Upon the application of the Illinois Central Railroad Company, dated September 9, 1931, file B-47526-W, authority is hereby granted for the establishment of a rate of 2¾ cents per 100 pounds on gravel, carloads, minimum 80,000 pounds, to be used in the construction of good roads from Roseland, Louisiana, to Montpelier, Pine Grove, and Grangeville, Louisiana, rate to expire December 10, 1931.

Effective as of September 9, 1931.

By order of the Commission.

(Signed) HENRY JASTERMSKI,
Secretary.

383 (Letter head)

Louisiana Public Service Commission

Francis Williams, chairman,
New Orleans, La.
Dudley J. LeBlanc,
Abbeville, La.
Harvey G. Fields,
Farmville, La.
James L. Helm, secretary,
Baton Rouge, La.

BATON ROUGE, *December 11, 1931.*

In reply please refer to our file no. I.G.C. No. 26—Witness, Stein.

L.P.S.C. Authority No. 4419-R

Amendment No. 1

Gravel, carloads, from Roseland, Louisiana, to Montpelier, Pine Grove, and Grangeville, La.

Refer to this Commission's authority no. 4419-R, of date September 11, 1931, and amend same, extending the expiration date until July 1st, 1932.

This amendment effective as of December 10, 1931.

By order of the Commission.

(Signed) HENRY JASTERMSKI,
Secretary.

384 *Exhibit no. 27, being order no. 929 of the Louisiana Public Service Commission dated April 30, 1932, in regard to rates on sand and gravel between points Louisiana east of the Mississippi River*

Louisiana Public Service Commission

Order No. 929

Exhibit 27
Witness, Brossius
No. 1814

Louisiana Highway Commission
vs.
Arkansas & Louisiana Missouri Railway
Co. et al.

In re Rates on Sand, Gravel, Shells, etc., between points in Louisiana.

Complainant is an agency of the government of the State of Louisiana charged with the duty of constructing and maintaining a system of State highways.

By formal complaint filed February 24, 1932, it alleges that it is engaged in an extensive program of construction and maintenance of such highways and that in connection with this program it purchases, ships, and uses large quantities of road-building materials, such as sand, gravel, shells, etc., and related commodities; that it pays the freight charges on all such shipments, which freight charges are deducted from contractors' estimates on construction work; and that on material shipped for maintenance work it pays and bears the transportation costs.

Briefly, the substance of the complaint is that there are no joint through rates in effect on the materials involved from producing points in Louisiana east of the Mississippi River to destinations in the State west of the river; that a large proportion of the highway materials used west of the river are produced east of the river; that the carload rates presently applicable from, to, and between points east of the east-bank crossing points and points west of the Mississippi River are made on combination of the local rates, less the deductions provided for in Kelly's combination tariff as to the east-side factors only, plus an arbitrary of 8 cents per ton for the Mississippi River crossing service; and that the present method of "making through rates between points east of the east-bank crossing points and points in western Louisiana west of the Mississippi River creates a complicated situation from the standpoint of rate checking, keeping the records, auditing the freight bills, and quoting or determining rates, which method encourages mistakes, requiring a large force to check the rates and audit freight bills", etc.

385 It is further alleged that the rates now in effect on like traffic between points in Louisiana west of the Mississippi River, and between points in Louisiana west of the river, on the one hand, and the east-bank crossing points of Angola, North Baton Rouge, Baton Rouge, Harahan, and New Orleans are those resulting from the scales found reasonable in I.C.C. docket 17000—part 11, Rates on Sand, Gravel, Shells, etc. Between Points in the Southwest; that the imposition of rates higher than the docket 17000, part 11, rates on shipments moving from, to, and between points east of the east-bank crossing points and points west of the river is unjust and unreasonable per se, and prays that an order issue establishing, on these materials from, to, and between points east of said east-bank crossing points in Louisiana and points in Louisiana west of the Mississippi River, rates, minimum weights, rules, regulations, and practices no higher and no more burdensome, mile for mile, than apply on shipments between points west of the river, and between points west of the river, on the one hand, and the above-mentioned east-bank crossing points on the other, including ferry charges for the Mississippi River crossing.

Copy of the petition, with citation, was served upon all railroads operating in the State; answers, consisting merely of general denials,

were filed by and in behalf of most of the carriers, and upon these issues the matter came on for hearing at New Orleans, Louisiana, on April 19th, 1932.

Extended discussion of the matter is unnecessary. The highway commission presented testimony and a series of exhibits which clearly sustain the averments of its petition. The carriers presented no testimony, nor did they urge any objection to the proposal of the highway commission other than to ask that such order as might issue, as a result of the proceeding, carry an effective date not less than thirty days from the date of its promulgation.

It is clearly to the best interest of all concerned, including the carriers, that a uniform basis of rates on these materials should be made applicable throughout the State of Louisiana.

386 The varying bases in effect at this time are productive of errors, disputes, and misapprehensions as to the charges properly applicable on many shipments, and particularly is this true on movements involving a crossing of the Mississippi River.

In our order no. 928, this day issued, in case 960 on our docket, we prescribed rates on these materials when moving between points in Lousiana wholly east of the Mississippi River upon the same basis as those in effect in western Louisiana. By requiring the maintenance of the same scales on the traffic involved in this proceeding, complete uniformity throughout the State will be achieved; and an order giving effect to these findings will issue. It is therefore

Ordered, That, for the transportation of sand, gravel, shells, crushed stone, and other related commodities, as hereinafter more fully described, in carloads, from, to, and between points in Louisiana east of crossing points on the east bank of the Mississippi River, on the one hand, and points in Louisiana west of the Mississippi River on the other, the following rates, rules, and minimum weights shall hereafter apply:

Commodity description

Sand (except asbestos sand and silica sand), gravel, crushed stone (broken stone ranging in size up to 200 pounds weight), including ground limestone, in bulk or in bags, but not including gypsum rock; riprap (irregular-shaped rock), in pieces ranging up to 200 pounds weight; clay, fire (except ground clay in bags, and treated or milled fire clay) clay, n.o.i.b., in current western classification (except ground clay in bags). Building, paving, or road-making and roofing materials, as follows: Common shells, whole or crushed; crushed tile and crushed sewer pipe (imperfect hollow tile and sever pipe crushed for use instead of crushed stone); soil; cinders; crushed brick or brickbats; chat (mine gravel), whole or crushed; and slag, not pulverized, in bulk in straight or mixed carloads.

387 *Distance scales of rates in cents per ton of 2,000 pounds*

Distances	Single-line rate	Joint-line rate	Distances	Single-line rate	Joint line rate
10 miles and under	50	65	230 miles and over 200	160	170
20 miles and over 10	56	71	260 miles and over 230	170	180
30 miles and over 20	62	77	290 miles and over 260	180	190
40 miles and over 30	68	83	320 miles and over 290	190	200
50 miles and over 40	74	89	350 miles and over 320	200	205
60 miles and over 50	80	95	380 miles and over 350	210	215
70 miles and over 60	85	100	410 miles and over 380	220	225
80 miles and over 70	90	105	440 miles and over 410	230	235
90 miles and over 80	95	110	470 miles and over 440	240	245
100 miles and over 90	100	115	500 miles and over 470	250	250
110 miles and over 100	105	120	530 miles and over 500	260	260
120 miles and over 110	110	125	560 miles and over 530	270	270
130 miles and over 120	115	130	590 miles and over 560	280	280
140 miles and over 130	120	135	620 miles and over 590	290	290
150 miles and over 140	125	140	650 miles and over 620	300	300
160 miles and over 150	130	140	680 miles and over 650	310	310
170 miles and over 160	135	145	710 miles and over 680	320	320
180 miles and over 170	140	150	740 miles and over 710	330	330
190 miles and over 180	145	155	770 miles and over 740	340	340
200 miles and over 190	150	160	800 miles and over 770	350	350

Minimum weight: The minimum carload weight shall be 90 per-cent of the marked capacity of the car, except that where car is loaded to full visible capacity actual weight shall govern.

Method of computing distances: In computing distances, the shortest single-line routes over which carload traffic can be moved without transfer of lading shall be used in connection with the single-line scale, and the shortest joint route over which carload traffic can be moved without transfer of lading shall be used in connection with the joint-line scale. Lines under common management and control shall be considered as single line in applying the rates herein prescribed.

388 *Mississippi River crossing allowance:* On shipments involving a crossing of the Mississippi River a charge of eight (8) cents per ton of 2,000 pounds shall be added to the foregoing scales. The allowance for Mississippi River crossings herein authorized is without prejudice to such future proceedings with respect thereto as may be found proper and necessary in the premises.

All rates, orders, authorities, tariffs, rules, and regulations in conflict herewith are hereby declared cancelled and annulled.

Effective June 1st, 1932.

(Signed) FRANCIS WILLIAMS,
Chairman.
" DUDLEY J. LEBLANC,
Commissioner.
" HARVEY G. FIELDS,
Commissioner.

By order of the Commission.
Baton Rouge, Louisiana, April 30th, 1932.
[SEAL]
(Sgd.) HENRY JASTERMSKI, *Secretary.*
Attest: A true copy.
(Sgd.) HENRY JASTREMSKI, *Secretary.*

389

Exhibit 28

Witness, P. A. Frye

I.C.C. Docket 25135

Increases in intrastate freight rates and charges

Statement showing present and prescribed rates on sand, gravel, crushed stone, and shells in territory in Louisiana east of the Mississippi River indicating prescribed increase over present rates in cents per ton, also percentage increase

Mileage	Present rates				Prescribed rates		Increase prescribed over col. 1 rates				Increase prescribed over col. 2 rates			
	Col. 1		Col. 2				Cents		Percentage		Cents		Percentage	
	S.	J.	S.	J.	S.	J.	S.	J.	S.	J.	S.	J.	S.	J.
5	40	X	50	X	50	65	10	------	25	------	0	------	0	------
10	40	------	50	------	50	65	10	------	25	------	0	------	0	------
15	40	------	50	------	56	71	16	------	40	------	6	------	12	------
20	40	------	50	------	56	71	16	------	40	------	6	------	12	------
25	40	------	50	------	62	77	22	------	55	------	12	------	24	------
30	50	------	50	------	62	77	12	------	24	------	12	------	24	------
35	50	------	60	------	68	83	18	------	36	------	8	------	13.3	------
40	50	------	60	------	68	83	18	------	36	------	8	------	13.3	------
45	50	------	60	------	74	89	24	------	48	------	14	------	23.3	------
50	50	------	60	------	74	89	24	------	48	------	14	------	23.3	------
55	50	------	60	------	80	95	30	------	60	------	20	------	33.3	------
60	50	------	60	------	80	95	30	------	60	------	20	------	33.3	------
65	50	------	60	------	85	100	35	------	70	------	25	------	41.7	------
70	50	------	60	------	85	100	35	------	70	------	25	------	41.7	------
75	50	------	60	------	90	105	40	------	80	------	30	------	50	------
80	60	------	70	------	90	105	30	------	50	------	20	------	28.6	------
85	60	------	70	------	95	110	35	------	58.3	------	25	------	35.7	------
90	60	------	70	------	95	110	35	------	58.3	------	25	------	35.7	------
95	60	------	70	------	100	115	40	------	66.7	------	30	------	42.9	------
100	60	------	70	------	100	115	40	------	66.7	------	30	------	42.9	------
105	60	------	70	------	105	120	45	------	75	------	35	------	50	------
110	60	------	70	------	105	120	45	------	75	------	35	------	50	------
115	60	------	70	------	110	125	50	------	83.3	------	40	------	57.1	------
120	60	------	70	------	110	125	50	------	83.3	------	40	------	57.1	------
125	60	------	70	------	115	130	55	------	91.7	------	45	------	64.3	------
130	60	------	80	------	115	130	55	------	91.7	------	35	------	43.8	------
135	60	------	80	------	120	135	60	------	100	------	40	------	50	------
140	80	------	80	------	120	135	40	------	50	------	40	------	50	------
145	80	------	80	------	125	140	45	------	56.3	------	45	------	56.2	------
150	80	------	80	------	125	140	45	------	56.3	------	45	------	56.2	------
155	80	------	100	------	130	140	50	------	62.5	------	30	------	30	------
160	80	------	100	------	130	140	50	------	62.5	------	30	------	30	------
165	90	------	100	------	135	145	45	------	50	------	35	------	35	------
170	90	------	100	------	135	145	45	------	50	------	35	------	35	------
175	90	------	100	------	140	150	50	------	55.6	------	40	------	40	------
180	90	------	120	------	140	150	50	------	55.6	------	20	------	16.7	------
185	90	------	120	------	145	155	55	------	61.1	------	25	------	20.8	------
190	90	------	120	------	145	155	55	------	61.1	------	25	------	20.8	------
195	90	------	120	------	150	160	60	------	66.7	------	30	------	25	------
200	90	------	120	------	150	160	60	------	66.7	------	30	------	25	------

Col. 1.—Present intrastate rates in cents per net ton of 2,000 lbs. in effect on L. & A. Railway to, from, and between points in Louisiana east of the Mississippi River, Angola to New Orleans, inclusive, authority L. & A. freight tariff no. 3771 I.C.C. 1321.

Col. 2.—Present intrastate rates in cents per net ton of 2,000 lbs. in effect on I. C. Y. & M. V.-N. O. G. N. and lines other than the L. & A. to, from, and between points in Louisiana east of the Mississippi River, authority I. C.-Y. & M. V. freight tariff no. 42-R, I.C.C. 7515, and N. O. G. N. intrastate tariff 1080 series.

390 Prescribed rates.—Rates recently prescribed intrastate by the Louisiana Public Service Commission to, from, and between points on all lines in Louisiana east of the Mississippi River, their order no. 928 effective June 1st, 1932.

X indicates no joint line through rates in effect, combination of locals apply less application Jones combination tariff except in the case of the Louisiana Southern Railway Company, whose factor is not subject under authority of the Louisiana Public Service Commission.

Fractions carried to only one decimal place.

Average increase in cents per ton prescribed over col. 1 rates, single line---------- 38.3
Average percentage increase prescribed over col. 1 rates, single line---------- 59.3
Average increase in cents per ton prescribed over col. 2 rates, single line---------- 25.8
Average percentage increase prescribed over col. 2 rates, single line---------- 33.6

391

Exhibit 29

Witness, P. A. Frye

I.C.C. Docket 25135

Increases in Intrastate Freight Rates and Charges

Comparative statement showing 17517 scale versus 17000 scale of rates up to 450 miles

Mileage	17517 scale		17000 scale	
	S.	J.	S.	J.
5	0.50	0.65	0.50	0.65
10	.50	.65	.50	.65
15	.55	.70	.56	.71
20	.55	.70	.56	.71
25	.60	.75	.62	.77
30	.60	.75	.62	.77
35	.70	.85	.68	.83
40	.70	.85	.68	.83
45	.80	.95	.74	.89
50	.80	.95	.74	.89
55	.80	.95	.80	.95
60	.80	.95	.80	.95
65	.90	1.05	.85	1.00
70	.90	1.05	.85	1.00
75	.90	1.05	.90	1.05
80	.90	1.05	.90	1.05
85	1.00	1.15	.95	1.10
90	1.00	1.15	.95	1.10
95	1.00	1.15	1.00	1.15
100	1.00	1.15	1.00	1.15
105	1.10	1.25	1.05	1.20
110	1.10	1.25	1.05	1.20
115	1.10	1.25	1.10	1.25
120	1.10	1.25	1.10	1.25
125	1.10	1.25	1.15	1.30
130	1.20	1.35	1.15	1.30
135	1.20	1.35	1.20	1.35
140	1.20	1.35	1.20	1.35
145	1.20	1.35	1.25	1.40
150	1.20	1.35	1.25	1.40
155	1.30	1.40	1.30	1.40
160	1.30	1.40	1.30	1.40
165	1.30	1.40	1.35	1.45
170	1.30	1.40	1.35	1.45
175	1.30	1.40	1.40	1.50
180	1.35	1.45	1.40	1.50
190	1.35	1.45	1.45	1.55
200	1.35	1.45	1.50	1.60
210	1.40	1.50	1.60	1.70
220	1.40	1.50	1.60	1.70
230	1.40	1.50	1.60	1.70
240	1.50	1.60	1.70	1.80
250	1.50	1.60	1.70	1.80
260	1.50	1.60	1.70	1.80
270	1.60	1.70	1.80	1.90
280	1.60	1.70	1.80	1.90
290	1.60	1.70	1.80	1.90
300	1.65	1.75	1.90	2.00
310	1.65	1.75	1.90	2.00
320	1.65	1.75	1.90	2.00
330	1.75	1.80	2.00	2.05
340	1.75	1.80	2.00	2.05
350	1.75	1.80	2.00	2.05
360	1.75	1.80	2.10	2.15
370	1.85	1.90	2.10	2.15
380	1.85	1.90	2.10	2.15
390	1.85	1.90	2.20	2.25
400	1.85	1.90	2.20	2.25
410	1.95	2.00	2.20	2.25
420	1.95	2.00	2.30	2.35
430	1.95	2.00	2.30	2.35
440	1.95	2.00	2.30	2.35
450	2.05	2.10	2.40	2.45

On all traffic moving from and to points east of east bank points to and from points in western Louisiana, except points on east bank of Mississippi River, add eight cents per ton to 17000 single and joint line scale.

392 *Exhibit 30, being order 6728 of Mississippi Railroad Commission dated January 16, 1932*

Mississippi Railroad Commission

Jackson, Mississippi

No. 6728

J. E. Tilford, chairman of the executive committee of the carriers in the Southern Group, Ex parte

In re Increases in freight rates and charges.

This cause is at issue on petition filed under date of December 19th, 1931, by J. E. Tilford, chairman of the executive committee of the carriers in the Southern Group, for and on behalf of all steam carriers operating in Mississippi. (The petition is also addressed to the State commissions of Alabama, Florida, Georgia, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia on behalf of the steam railroads operating in the States named, Louisiana east of the Mississippi River, only), the said petition stating that it is amendatory of and supplemental to petition hereinbefore filed, dated June 20th, 1931.

To the said petition of December 19th, 1931, were attached exhibits: B, a copy of the Interstate Commerce Commission's report and order dated October 16th, 1931, 178 I.C.C. 539; C, a copy of petition of the Association of Railway Executives dated November 19th, 1931, to the Interstate Commerce Commission, "Presenting proposal of a plan pursuant to suggestion of the Commission in its report in this proceeding", pertaining to a corporate agency to be created and organized under the name of the Railroad Credit Corporation for the purpose of collecting, receiving, and administering the fund growing out of the increase in rates scheduled by the Commission for an increase in the appendage to its report in the proceeding, etc.; and D, a copy of the Interstate Commerce Commission's "Supplemental report (and order) on reconsideration" in the above case, dated December 5th, 1931, 179 I.C.C. 215, which said order is amendatory of and supplemental to the order of October 16th, 1931, and in which the increases in rates and charges are expressed in cents per 100 pounds or per ton only; and in the petition to this Commission it is asked to authorize for application on Mississippi intrastate traffic the same increases in freight rates and charges as were authorized by the Inter-

393 state Commerce Commission in the—

Fifteen Percent case

Ex parte 103.

In the matter of increase in freight rates and charges, in order of October 16th, 1931, as amended and supplemented by order of Decem-

ber 5th, 1931, such increases to become effective at as early a date as practicable.

In the hearing before the Interstate Commerce Commission, the carriers and the security holders, who strongly supported them, contended that the matter should be treated as an emergency and not as a rate case. They presented evidence to prove that railroad credit had collapsed, that the situation constituted an emergency of the gravest character, and that an immediate increase in freight rates and charges was the only practical method of meeting the emergency, regardless of the future steps required for a permanent solution of the problem of stabelizing railroad credit. They offered no evidnece with respect to the rates on any particular commodity or kind of traffic.

The Interstate Commerce Commission treated the matter as an emergency, its orders in the case clearly indicating that all due consideration had been given to the necessity for the maintenance in the public interest of an adequate transportation system as provided for in the Transportation Act of 1920.

In the Comm'ssion's orders it was stated that articles had been selected on which it was believed the rates could be slightly increased without causing the traffic to be transferred to other transportation agencies and without bringing about an undue disturbance in business conditions for transgressing the bounds of maximum reasonable rates. However, it found that the increases were justified only as a temporary emergency measure and primarily and principally to assist some of the carriers in connection with the payment
394 of their fixed charges, and further provided that in the absence of action by it to the contrary, the increases should expire on March 31st, 1933.

After due notice, interested parties were heard on January 12th, 1932, by this Commission.

Hon. R. V. Fletcher, vice president and general counsel of the Illinois Central System, appeared on behalf of all railroads in Mississippi, and J. E. Tilford, chairman, Southern Freight Association, and urged that the Commission grant for application on Mississippi intrastate traffic the same increases as were authorized by the Interstate Commerce Commission.

Representatives of shippers or receivers appeared and opposed increases on the commodities in which they are interested.

We deem it unnecessary to enter into an extended discussion of the causes of the collapse of railroad credit. We will, however, say it resulted very largely from decreased movement of traffic and revenues of the carriers, due to business depression beginning late in 1929 or early in 1930, extending throughout the country and continuing up to the present time.

This Commission, having considered the matter as an emergency, finds that it should be and the petition is hereby granted as hereinafter provided.

It is therefore ordered that the petition be and it is hereby granted, and all steam railroads operating in Mississippi are hereby authorized to apply on Mississippi intrastate traffic the same increases in freight rates and charges as were authorized by the
395 Interstate Commerce Commission in its orders of October 16th and December 5th, 1931, referred to above, except that gravel, all kinds, and sand, all kinds, shall be added to the commodities named in list A, page 237, of the Interstate Commerce Commission's order of December 5th, 1931, and that on the commodities in said list as here amended there shall be no increase.

The increases herein provided for are granted, subject to all the terms and conditions prescribed by the Interstate Commerce Commission in its orders referred to, including the date of expiration March 31st, 1933, unless sooner cancelled or extended by order of this Commission.

This order to become effective January 25th, 1932.

Ordered by the Commission this January 16th, 1932.

J. W. WILLIAMS,
Secretary Mississippi Railroad Commission.

CC: Interstate Commerce Commission, Washington, D.C. All railroads, State commissions named in the order, State commissioners; J. E. Tilford, chairman, S.F.A., Atlanta, Ga.; J. A. Strever, G.T.M., A. S. L. R.R., Atlanta, Ga.; Hon. Jno. E. Benton, gen. sol., Washington, D.C.; Faulkner Concrete Pipe Co., Jackson, Miss.; A. J. Young, A.T.M., Interstate Agricultural Corporation, Atlanta; Columbus Brick Co., Columbus, Miss.; Pure Oil Co., Chicago, Ill.; Davison Chemical Co., Baltimore; H. R. Dever, traffic mgr., Millsaps Bldg., Jackson, Miss.; C. M. Wann, mgr., Capt. Cital Traffic Bureay, Capital Nat'l Bank, Jackson, Miss.; T. P. Goodwin, Jackson Frt. Bureau, Lampton Bldg., Jackson, Miss.; Gulf States Creosoting Co., Hattiesburg; Southern Pine Association, New Orleans, La.; C. B. Ellis, T.M. (some oil co.), Pittsburg, Pa.; Clarke & LaRoe, Washington, D.C.; Allen Gravel Co., Luka, Miss.; Dr. B. E. Green, pres. Miss. Assn. of Supervisors, Hattiesburg, Miss.; T. W. Maddux, Brookhaven, Miss.; Lee Clark, port director, Gulfport, Miss.

396 Form 5046
(Emblem)

May 19, '32 546873
20M-7-30-

MISSOURI PACIFIC RAILROAD COMPANY

Accounting Department

F. P. Johnson, vice president

T. M. Niven, general auditor
C. B. Milsom, assistant auditor
H. C. Hale, assistant auditor
C. B. Moore, auditor disbursements
W. H. Malcolm, auditor freight receipts
H. H. McIntyre, auditor passenger receipts
H. C. Abbey, auditor station accounts
L. P. O'Connor, demurrage manager
C. G. Whitworth, general accountant
E. G. Trobaugh, car accountant

Interstate Commerce Commission. Received May 19, 1932. Bureau of Mails and Files.
Received in evidence. (Sgd.) GHW, May 24, 1932.

ST. LOUIS, Mo., *May 16, 1932.*
AFR-A

Mr. GEORGE B. MCGINTY,
Secretary, Interstate Commerce Commission,
Washington, D.C.

Formal complaint, May 24, 1932

DEAR SIR: In connection with hearing at New Orleans, La., on 6th instant, in docket 25135, Emergency Increase Ex parte 103, I am listing below names of various railroads operating in State of Louisiana, and our junction point of interchange.

Railroads operating in State of Louisiana connecting with Mo. Pac. RR.

Railroad	Junction	Railroad	Junction
A. A. E. M.	Bastrop, La.	New Orleans & N. E.	New Orleans.
	Monroe.	New Orleans Tex. & Mex.	Kinder.
C. R. I. & P.	Alexandria.		New Orleans.
Christie & Eastern	Long Leaf.	Ouachita & Northwestern	Clarks.
G. C. & S. F.	Oakdale.		Standard.
Illinois Central	New Orleans.	Red River & Gulf	Long Leaf.
Kansas City Southern	Lake Charles.	Texas & New Orleans	Alexandria.
Louisiana & Arkansas	Alexandria.		Gretna.
	Ferriday.		Lake Charles.
	Georgetown.		New Orleans.
	New Orleans.		Harvey.
	Tioga.	Texas & Pacific	Alexandria.
	Vidalia.		Ferriday.
	Concordia, Jt.		Gouldsboro.
Louisiana Southern	New Orleans.		New Orleans.
Louisville & Nashville	New Orleans.	Tremont & Gulf	Rochelle.
Natchez, Urania & Ruston	Olla.	Yazoo & Miss. Valley	Delhi.
	Urania.		Monroe.
New Orleans & Gt. Nor.	New Orleans.		Rayville.
New Orleans & Lower Cst.	Gouldsboro.		Tallulah.
			New Orleans.

397 (Same letterhead as first sheet)

G. B. McG.—2 St. Louis, Mo.

Missouri Pacific Railroad has through billing arrangements with all roads named, except the Louisiana Southern Railway and New Orleans & Lower Coast Railroad.

Above information is sent you on request of Mr. Joseph Lallande, general freight agent, Southern Pacific Lines, his letter May 10th, 1932, file S-25135.

Yours truly,

(Signed) (Name illegible)
Auditor Freight Receipts.

SHB/OC (Initials signed) (Illegible.)

CC—Louisiana Public Service Commission, Baton Rouge, La.
CC—Mr. W. M. Barrow, attorney, Baton Rouge, La.
CC—Mr. Edgar Moulton, G.M., N.O. Joint Traffic Bureau, New Orleans, La.
CC—Mr. L. F. Daspit, Canal Bank Building, New Orleans, La.
CC—Mr. Jos. Lallande, G.F.A., Southern Pacific Lines, New Orleans, La.

398 Minute entry of argument and submission, November 28, 1932, omitted in printing.

399 (Copy.)

In United States District Court, Eastern District of Louisiana

No. 96, in Equity

STATE OF LOUISIANA, LOUISIANA PUBLIC SERVICE COMMISSION, AND Louisiana Highway Commission

versus

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, Texas & New Orleans R.R. Co. et al.

Wylie M. Barrow, Esq., special assistant to attorney general of Louisiana, counsel for plaintiffs. Nelson Thomas, Esq., Solicitor Interstate Commerce Commission; Elmer B. Collins, Esq., assistant to Attorney General of the United States, counsel for defendants. Harry McCall, Esmond Phelps, and Selim B. Lemle, Esqs., counsel for intervenors.

Before FOSTER, Circuit Judge, and BORAH and COX, District Judges.

Opinion of the court rendered December 14, 1932

Filed Dec. 14, 1932

BORAH, District Judge: This is a bill in equity against the United States and the Interstate Commerce Commission, brought by the State of Louisiana, Louisiana Public Service Commission, and Louisiana Highway Commission, to annul and enjoin the enforcement of an order of the Interstate Commerce Commission in the proceeding numbered and entitled "No. 25135, Increases in Intrastate Freight Rates, Part 5, Louisisana", 186 I.C.C. 615, requiring the railroads operating in intrastate commerce in the State of Louisiana to charge in such commerce "rates which shall not be lower than the rates now in force and applicable to intrastate commerce within the State of Louisiana, plus the surcharges authorized by the findings in Fifteen Percent case, 1931." The suit is brought under the Urgent Deficiencies Act, October 22, 1913, C32, 38 Stat. 208, 219, and was heard on an application for an interlocutory injunction. The railroad companies affected by the order were, on their petition, permitted to intervene and are here as defendants.

Prior to the institution by the Commission of its investigation as to intrastate rates and charges it had made and rendered its original report and decision in Fifteen Percent case, 1931, 178
400 I.C.C. 539, in which the conclusion was reached "that a 15 percent increase in all freight rates and charges would increase revenue, if at all, only temporarily, and that its ultimate effect, not very long postponed, would be to harm rather than help

the railroads", and also "that such an increase would raise the rates upon many kinds of traffic above a just and reasonable level." It was, however, pointed out in said report that it did not follow that no increase in rates should be made at that time, and after adverting to some important increases authorized and pending the Commission went on to say that it was their further belief "that the traffic departments of the railroads should address themselves to the task of making such changes in the rates on particular kinds of traffic as will, in their judgment after careful analysis of all attendant circumstances, produce additional revenue and which can be supported as reasonable under existing conditions", and the assurance was given that if tariffs were filed in accordance with this suggestion that such proposals would receive sympathetic and expedited consideration. A substitute plan was also offered for the consideration of the railroad executives which proposed specific rate increases upon certain designated commodities conditioned in part that the income therefrom should be kept separate from other operating income of the carriers, placed in a pool, and used to pay fixed charges and for other purposes described in the report. This substitute measure of relief did not meet with entire favor on the part of the carriers, because in their judgment the pooling plan provided for could not as a practical matter be applied, and they accordingly petitioned the Commission to make such distribution on a loan basis. Further argument was heard, and on reconsideration the Commission handed down its supplemental report, dated December 5, 1931, 179 I.C.C. 215, modifying its original report to the extent of relieving the carriers from complying with the pooling plan and authorizing the establishment of the proposed increases without any condition or restrictive requirement whatever. More specifically, the effect of the Commission's orders were to authorize throughout the country on certain commodities therein specified increases in interstate rates varying from six to twelve cents per ton to two cents per 100 pounds, subject to a maximum increase of 10 percent in the charge of any shipment, said increases to expire March 31,
401 1933, unless extended. The freight articles selected for the application of the surcharges were those on which it was thought some increases might be permitted without diversion of traffic to other means of transportation and without bringing about an undue disturbance in business conditions or transgressing the bounds of maximum reasonable rates. There was, however, no finding that each and every rate so increased would be a maximum reasonable rate, and there was no requirement that the rates so increased should be maintained as minimum rates, and the carriers were left free to reduce them if experience should show that more traffic and revenue could be obtained by a reduction.

Following the issuance of its reports in Fifteen Percent case, 1931, the carriers throughout the United States, including those

operating in the State of Louisiana, published and applied the surcharges allowed on interstate traffic, and those operating in the State of Louisiana petitioned the Louisiana Public Service Commission for authority to apply corresponding increases on Louisiana intrastate traffic. In due course the Louisiana Commission held a public hearing and granted the petition in part, but following the precedent established by the Interstate Commerce Commission and in the exercise of its authority to regulate and control intrastate rates, exempted from the surcharges thirty-seven commodities, principally the products of agriculture and all less-than-carload traffic. Thereupon the carriers operating in Louisiana and carriers operating in other States whose rate-regulating bodies had denied similar petitions applied to the Interstate Commerce Commission for thirteenth section relief. After due hearing the Commission, on September 29, 1932, found, 186 I.C.C. 615, that the failure of the Louisiana Commission to permit application of surcharges corresponding to those maintained on interstate traffic resulted in unjust discrimination against interstate commerce, but no appropriate order was issued at that time. On November 7, 1932, the Commission entered a definite thirteenth section order requiring the carriers to

402 establish and maintain on the thirty-seven commodities exempted from the surcharges by the Louisiana Commission "and all less-than-carload traffic in intrastate commerce within the State of Louisiana, rates which shall be no lower than the rates now in force and applicable to the intrastate transportation of said traffic within the State of Louisiana, plus the surcharges authorized by the findings in Fifteen Percent case, 1931, 178 I.C.C. 539 and 179 I.C.C. 215, on corresponding interstate traffic so long as such surcharges are maintained on such traffic in accordance with said findings." It is this order that constitutes the subject matter of this suit.

The principal ground of attack upon which complainants rely is that the Commission did not comply with section 13 (4) of the Amended Commerce Act in that it made no finding in Fifteen Percent case, 1931, that the resulting rates would be just and reasonable, and hence there is no basis for the order requiring the intrastate rates to be raised. Florida v. United States, 282 U.S. 194; Georgia Commission v. United States, 283 U.S. 765. On the other hand, the defendants contend that this is a revenue case and that the rule is to be distinguished from a case where particular rates are involved, and that the action of the Commission was in accordance with section 15a, dovetailed in with section 13 (4).

In cases of this character the Commission may apparently act from one or both reasons—namely, (1) that there is an unjust dis-

crimination or undue prejudice created against interstate commerce; or (2) that, it being a revenue case, the intrastate rates are not contributing their proper proportion to the revenue of carriers, thus casting a burden on interstate commerce. In our judgment the Commission's order, under either situation, lacks the findings that are essential to support a destruction of the State's regulatory power; it made no order requiring the carriers to apply their proposed interstate surcharges but only granted them permission to do so or not as they elected, and the rates resulting from the authorized surcharges were never found to be just and reasonable; nor can the Commission's order be justified as a revenue measure, because it specifically found that, " where we make such a finding (of unjust discrimination) and require an increase in the intrastate rates, it is to be understood that we conclude that no positive finding in regard to the revenue outcome of the increase can be justified." We do not believe that the Interstate Commerce Commission can, by allowing a general increase in interstate rates, compel the State com-
403 mission to allow the same increases on intrastate traffic in the absence of the essential finding that the resulting rates would be reasonable or that for the future they will increase the carriers' revenue.

An interlocutory injunction may accordingly be granted as prayed for. In the event of an appeal a supersedeas will be granted to the carriers on the furnishing of bond.

New Orleans, Louisiana, December 14, 1932.

(Signed) RUFUS E. FOSTER,
U. S. Circuit Judge.
" WAYNE G. BORAH,
U.S. District Judge.
" ALLEN COX,
U.S. District Judge.

404 In United States District Court

Interlocutory decree

Filed Dec. 14, 1932

This cause came on for hearing on a former day on the application of the plaintiffs for the issuance of a preliminary injunction, and was argued and submitted upon the pleadings, exhibits, and evidence submitted by the respective parties.

Whereupon the court took time to consider;

On due consideration thereof, and for the reasons assigned in the written opinion of the court on file.

It is ordered, adjudged, and decreed, That a preliminary injunction issue herein as prayed for in said bill conditioned upon the furnishing of a bond in a sum to be approved by the court.

New Orleans, Louisiana, December 14th, 1932.

(Signed) RUFUS, E. FOSTER,
United States Circuit Judge.
" WAYNE G. BORAH,
United States District Judge.
" ALLEN COX,
United States District Judge.

405 [Bond on injunction for $5,000 approved and filed December 15, 1932, omitted in printing.]

406 [Omitted.]

407 [Title omitted.]

Stipulation for final submission of case

Filed Dec. 22, 1932

It is hereby stipulated by and between the plaintiffs and the defendants in the above-entitled cause, through their respective counsel, that the hearing upon plaintiffs' application for interlocutory injunction held in New Orleans, La., on November 28, 1932, shall be taken and considered by the court as a final hearing of said case, and that the court shall, upon consideration of the pleadings, exhibits, evidence, briefs, and arguments of counsel presented to it at said hearing, proceed to make and enter its final decree in said case.

(Signed) WYLIE M. BARROW,
Attorney for Plaintiffs.
(Signed) ELMER B. COLLINS,
Attorney for Defendant, United States.
(Signed) NELSON THOMAS,
Attorney for Defendant, Interstate Commerce Commission.
(Signed) SELIM B. LEMLE,
HARRY MCCALL,
EAMOND PHELPS,
Attorneys for Intervening Defendant Railroad Companies, other than New Orleans & Northeastern Railroad Company.
(Signed) J. BLANC MONROE,
By HARRY MCCALL,
Attorney for New Orleans & Northeastern Railroad Company, Intervenor.

DECEMBER 22, 1932.

408 In United States District Court

Final decree

Filed Dec. 27, 1932

This cause came on to be heard on final hearing on the bill of complaint and the answers of the defendants, United States of America and Interstate Commerce Commission, and the intervention of Texas and New Orleans Railroad Company and other railroad and railway companies, joined therein; and, thereupon, it was by and between counsel for the plaintiffs and counsel for the United States of America and for the Interstate Commerce Commission and for the interveners, with the consent of the court, agreed, that this cause be submitted upon the same evidence on this final hearing as was had and produced before the court at the hearing upon the application for a preliminary injunction hereinbefore allowed. And, thereupon, said evidence being submitted, the cause was submitted without further argument by counsel.

Upon consideration whereof, the court being fully advised in the premises,

It is ordered, adjudged, and decreed, as follows:

1. That the prayer of the United States of America, defendant, to dismiss the petition be and the same is hereby denied.

2. That the prayer of the Interstate Commerce Commission, defendant, to dismiss the petition be, and the same is hereby, denied.

3. That the preliminary injunction heretofore granted herein be, and the same is hereby, made perpetual.

(Signed) RUFUS E. FOSTER,
Circuit Judge.
" WAYNE G. BORAH,
District Judge.
" ALLEN COX,
District Judge.

DECEMBER 27, 1932.

409 In United States District Court

[Title omitted.]

Petition for appeal

Filed Jan. 19, 1933

United States of America, Interstate Commerce Commission, Texas & New Orleans Railroad Company, Arkansas & Louisiana-Missouri Railway Company, Chicago, Rock Island & Pacific Railway Company, Christie & Eastern Railway Company, Gulf, Colorado & Santa Fe Railway Company, Illinois Central Railroad Com-

pany, Kansas City Southern Railway Company, Louisiana & Arkansas Railway Company, Louisiana & North West Railroad Company, Louisville & Nashville Railroad Company, Mansfield Railway & Transportation Company, Missouri Pacific Railway Company, New Iberia & Northern Railroad Company, New Orleans & Northeastern Railroad Company, New Orleans, Texas & Mexico Railway Company, Natchez, Urania and Ruston Railway Company, New Orleans & Lower Coast Railroad Company, Ouachita & Northwestern Railroad Company, Red River & Gulf Railroad, St. Louis Southwestern Railway Company, Sibley, Lake Bisteneau & Southern Railway Company, Tremont & Gulf Railway Company, The Yazoo & Mississippi Valley Railroad Company, and The Texas & Pacific Railway Company, defendants in the above-entitled cause, feeling themselves aggrieved by the final order or decree of the District Court entered the 27th day of December, 1932, pray an appeal therefrom to the Supreme Court of the United States. The particulars wherein they consider the final order or decree erroneous are set forth in the assignments of error filed herewith, to which reference is made.

410

They pray that a transcript of the record, proceedings, and papers upon which the final order or decree was made and entered may be duly authenticated and transmitted forthwith to the Supreme Court of the United States.

(Signed) E. E. TALBOT,
United States Attorney.
(Sgd.) ELMER B. COLLINS,
Special Assistant to the Attorney General.
(Sgd.) NELSON THOMAS,
Attorney for Interstate Commerce Commission.
(Sgd.) HARRY MCCALL,
Attorney for defendant railroad companies other than New Orleans & Northeastern Railroad Company.
(Sgd.) J. BLANC MONROE,
By HARRY MCCALL,
Attorney for New Orleans & Northeastern Railroad Company.

411 In United States District Court

[Title omitted.]

Filed Jan. 19, 1933

Assignment of errors

Come now the defendants in the above-entitled cause and in connection with their petition for appeal file the following assignments of error on which they will rely on their appeal to the Supreme Court of the United States from the final order or decree of the District Court entered December 27, 1932.

The District Court erred:

1. In granting the plaintiffs' prayer for final injunction.

2. In not denying plaintiffs' prayer for final injunction.

3. In setting aside, annulling and suspending the order of the Interstate Commerce Commission entered November 7, 1932, in I.C.C. Docket No. 25135: Increases in Intrastate Rates and Charges,
411 part 5—Louisiana (186 I.C.C. 615) and in granting and issuing a permanent injunction enjoining the enforcement, execution, and operation of said order.

4. In holding that the Interstate Commerce Commission had not found that the interstate rates to the level of which the intrastate rates between points in Louisiana were ordered to be raised, were just and reasonable.

5. In holding that in the proceeding before the Interstate Commerce Commission involving a general increase in rates in order to assist the carriers in earning a fair and reasonable return, the law requires the Commission to find each and every rate to be just and reasonable before it can be lawfully prescribed or authorized.

6. In holding that the Commission order lacked findings that are essential to support it.

7. In holding that the Interstate Commerce Commission did not find that the revenue of the carriers would be increased by putting into effect the increased rates prescribed by the Interstate Commerce Commission on intrastate traffic between points in Louisiana.

8. In holding that the findings of the Commission with respect to the future effect of the increases in intrastate rates upon the revenues of the carriers were insufficient to support the order.

9. In giving consideration to the fact that the Commission did not by mandatory order require the carriers to increase their interstate freight rates, but that such increases were made by the carriers at their discretion under authority of the Commission granted pursuant to section 6 of the Interstate Commerce Act.

412 Wherefore, said defendants pray that said decree of December 27, 1932, be reversed and set aside and that the order of the Commission aforesaid be given full force and effect.

(Sgd.) E. E. TALBOT,
United States Attorney.

(Sgd.) ELMER B. COLLINS,
Special Assistant to the Attorney General.

(Sgd.) NELSON THOMAS,
Attorney for Interstate Commerce Commission.

(Sgd.) HARRY MCCALL,
Attorney for defendant railroad companies other than New Orleans & Northeastern Railroad Company.

(Sgd.) J. BLANC MUNROE,
By HARRY MCCALL,
Attorney for New Orleans & Northeastern Railroad Company.

414 In the United States District Court for the Eastern District of Louisiana, New Orleans Division

In Equity No. 96

STATE OF LOUISIANA ET AL., PLAINTIFFS, v. UNITED STATES OF AMERICA, Interstate Commerce Commission, Texas & New Orleans Railroad Company et al., defendants

Order allowing appeal

Filed Jan. 19, 1933

In the above-entitled cause, the defendants and intervenors having made and filed their petition praying an appeal to the Supreme Court of the United States from the final order or decree of the District Court entered December 27, 1932, and having also made and filed assignments of error and statement of grounds of jurisdiction and having in all respects conformed to the statutes and rules of the court in such case made and provided:

It is ordered and decreed that the appeal be, and the same is hereby, allowed as prayed upon the intervening carriers jointly giving bond in the sum of $1,000.00, returnable in forty (40) days from the date hereof, and the clerk is directed to transmit forthwith a properly authenticated transcript of the record, proceedings, and papers on which the order or decree was made and entered to the Supreme Court of the United States.

415 Made and entered this 19th day of January, 1933.

(Signed) RUFUS E. FOSTER,
United States Circuit Judge.
" ALLEN COX,
United States District Judge.
" WAYNE G. BORAH,
United States District Judge.

416 In Supreme Court of the United States

[Title omitted.]

Notice serving appeal papers and acknowledgment of service thereof

Filed Jan. 19, 1933

Pursuant to rule 12, paragraph 2, Rules of the Supreme Court of the United States, you are hereby served with copies of petition for appeal, order allowing appeal, assignments of error and statement as to jurisdiction in the above-entitled cause.

Your attention is directed to the provisions of rule 12, paragraph 3, copied in the margin.[1]

(Sgd.) E. E. TALBOT,
Attorney for United States.
(Sgd.) ELMER B. COLLINS;
Special Assistant to the Attorney General.
(Sgd.) NELSON THOMAS,
Attorney for Interstate Commerce Commission.

417

(Signed) HARRY MCCALL,
Attorney for defendant railroad companies other than New Orleans & Northeastern Railroad Co.
(Signed) J. BLANC MONROE,
By HARRY MCCALL,
Attorney for New Orleans & Northeastern Railroad Company.

Service acknowledged this 19th day of January, 1933.
(Signed) WYLIE M. BARROW,
Counsel for Appellees,
Special Assistant to the Attorney General of Louisiana.

418 In United States District Court

[Title omitted.]

Notice to Attorney General of Louisiana and acknowledgment of service thereof

Filed January 19, 1933

To Honorable GASTON L. PORTERIE,
Attorney General of the State of Louisiana:

Pursuant to urgent deficiencies act, October 22, 1913 (38 Stat. 221), you are hereby notified that the United States of America, Interstate Commerce Commission, Texas & New Orleans Railroad

[1] Rule 12, paragraph 3: "Within 15 days after such service the appellee may file with the clerk of the court possessed of the record, and serve upon the appellant a typewritten statement disclosing any matter or ground making against the jurisdiction of this court asserted by the appellant. There may be included in, or filed with, such opposing statement a motion by appellee to dismiss or affirm. Where such a motion is made it may be opposed as provided in rule 7, paragraph 3."

Company, et al., defendants, have taken an appeal from the final order or decree of the District Court, entered December 27, 1932, to the Supreme Court of the United States, and that the order allowing appeal makes the same returnable within forty (40) days from the date thereof.

(Sgd.) E. E. TALBOT,
Attorney for United States.
(Sgd.) ELMER B. COLLINS,
Special Assistant to the Attorney General.
(Sgd.) NELSON THOMAS,
Attorney for Interstate Commerce Commission.

419 (Sgd.) HARRY MCCALL,
Attorney for defendant railroad companies other than New Orleans & Northeastern Railroad Company.
(Sgd.) J. BLANC MONROE,
By HARRY MCCALL,
Attorney for New Orleans & Northeastern Railroad Company.

Service of the foregoing notice and the receipt of a copy thereof are hereby acknowledged this 19th day of January 1933.

(Sgd.) G. L. PORTERIE,
Attorney General, State of Louisiana.

420 In United States District Court

[Title omitted.]

Praecipe for transcript of record

Filed January 19, 1933

To the CLERK:

Please prepare a transcript of the record in the above-entitled cause in the matter of the appeal of the defendants herein, and include therein, in the order given below, the following matter, to wit:

1. Plaintiffs' bill of complaint with the exhibits thereto, to wit:

"A." Copy of Commission's report and order in no. 25135, Increases in Intrastate Freight Rates (186 I.C.C. 615).

"B." Copy of Commission's report in Ex parte 103, Fifteen Percent case, 1931, and appendix thereto (178 I.C.C. 539).

421 "C." Copy of Commission's supplemental report and appendix thereto in above-styled proceeding (179 I.C.C. 215).

"D." Report of Louisiana State Commission and its orders no. 897, made February 8, 1932, and no. 901, made March 3, 1932.

2. Answer of the United States.

3. Answer of the Interstate Commerce Commission.

4. Intervention and answer of Texas & New Orleans Railroad Company et al.

5. Certified copy of the transcript of the record of the evidence and proceedings before the Interstate Commerce Commission in no 25135, Increases in Intrastate Freight Rates, offered in evidence by counsel for plaintiffs (or in lieu thereof any narrative or condensed statement of said record and evidence agreed upon by the parties and/or approved by the court).

6. Opinion of the court in instant case rendered December 14, 1932.

7. Temporary injunction order entered December 14, 1932.

7-A. Temporary injunction bond.

8. Stipulation for final submission of case.

9. Final decree entered December 27, 1932.

10. All docket and minute entries not called for in any other paragraph of this praecipe.

11. Petition for appeal.

12. Assignments of error.

13. Order allowing appeal.

14. Notice serving appeal papers and acknowledgment of service thereof.

15. Notice to the attorney general of Louisiana and acknowledgment of service thereof.

422 16. Praecipe for record.

17. Citation on appeal.

17-A. Appeal bond.

18. Statement of jurisdiction of Supreme Court of the United States, together with notice and acknowledgment of service.

(Sgd.) E. E. TALBOT,
Attorney for United States.

(Sgd.) ELMER B. COLLINS,
Special Assistant to the Attorney General.

(Sgd.) NELSON THOMAS,
Attorney for the Interstate Commerce Commission.

(Sgd.) HARRY MCCALL,
Attorney for Defendant Railroad Companies Other than New Orleans & Northeastern Railroad Co.

(Sgd.) J. BLANC MONROE,
By HARRY MCCALL,
Attorney for New Orleans & Northeastern Railroad Co.

The undersigned attorney for appellee hereby accepts and joins in the above praecipe.

(Sgd.) WYLIE M. BARROW,
Special Assistant to the Attorney General of Louisiana,
Attorney for Appellee.

423–424 [Citation in usual form showing service on Wylie M. Barrow, filed Jan. 19, 1933, omitted in printing.]

425–427 [Bond on appeal for $1,000 approved and filed Jan. 19, 1933, omitted in printing.]

428 [Clerk's certificate to foregoing transcript omitted in printing.]

429–430 [Omitted.]

431 In United States District Court

Order extending time

Filed Feb. 23, 1933

Considering the foregoing motion and the clerk's certificate thereto attached,

It is ordered that the time for docketing the case and filing the record in the Supreme Court of the United States be enlarged until April 1, 1933.

New Orleans, Louisiana, February 17, 1933.

RUFUS E. FOSTER,
United States Circuit Judge.
ALLEN COX,
United States District Judge.
WAYNE G. BORAH,
United States District Judge.

[File endorsement omitted.]

432 In Supreme Court of the United States

Statement of the points on which appellants intend to rely and of the parts of the record which appellants think necessary for the consideration thereof

Filed April 14, 1933

Pursuant to paragraph 9 of rule 13 of the revised rules of this court, as amended, the appellants in the above-entitled cause state:

I. That the points upon which they intend to rely in this court are that the district court erred:

1. In granting the appellees' prayer for final injunction.

2. In not denying appellees' prayer for final injunction.

433 3. In setting aside, annulling, and suspending the order of the Interstate Commerce Commission entered November 7, 1932, in I.C.C. Docket No. 25135, Increases in Intrastate Rates and Charges, Part 5—Louisiana, 186 I.C.C. 615, and in granting and issuing a permanent injunction enjoining the enforcement, execution, and operation of said order.

4. In holding that the Interstate Commerce Commission had not found that the interstate rates to the level of which the intrastate rates between points in Louisiana were ordered to be raised, were just and reasonable.

5. In holding that in the proceeding before the Interstate Commerce Commission involving a general increase in rates in order to assist the carriers in earning a fair and reasonable return, the law requires the Commission to find each and every rate to be just and reasonable before it can be lawfully prescribed or authorized.

6. In holding that the Commission order lacked findings that are essential to support it.

7. In holding that the Interstate Commerce Commission did not find that the revenue of the carriers would be increased by putting into effect the increased rates prescribed by the Interstate Commerce Commission on intrastate traffic between points in Louisiana.

8. In holding that the findings of the Commission with respect to the future effect of the increases in intrastate rates upon the revenues of the carriers were insufficient to support the order.

9. In giving consideration to the fact that the Commission did not by mandatory order require the carriers to increase their inter-
434 state freight rates, but that such increases were made by the carriers at their discretion under authority of the Commission granted pursuant to section 6 of the Interstate Commerce Act.

II. That the parts of the record which appellants think necessary for the consideration of the points aforesaid are, and the appellants ask that said hereinafter stated parts of the record shall be printed by the clerk:

1. Bill of complaint (R. 2).

2. Exhibit A to bill of complaint, Commission's report and order in Docket No. 25135, 186 I.C.C. 615 (R. 19).

3. Exhibit B to bill of complaint, Commission's report in Ex parte 103, 178 I.C.C. 539 (R. 75).

4. Exhibit C to bill of complaint, Commission's supplemental report in Ex parte 103, 179 I.C.C. 215 (R. 125).

5. Exhibit D to bill of complaint, report of Louisiana State Commission and its orders nos. 879 and 901 (R. 152).

6. Answer of defendant United States (R. 161).

7. Answer of defendant Interstate Commerce Commission (R. 166).

8. Intervention and answer of T. & N. O. R. Co. et al. (R. 171).

9. Stipulation re statement of evidence (R. 171).

10. Condensed statement of testimony (R. 182).

11. List of exhibits referred to in condensed statement of testimony (R. 263).

12. Clerk's notation as to duplication of exhibits (R. 266).

13. Petition of railroads to Louisiana Public Service Commission (R. 267).

435 14. Exhibit A to amended application to Louisiana Public Service Commission in no. 349 (R. 271–278).

15. Exhibit 5, Original application of East Side Lines to Louisiana Public Service Commission (R. 279–280).

16 Exhibit 5-A, supplemental application of East Side Lines to Louisiana Public Service Commission, December 19, 1931 (R. 281–284).

17. Exhibit 5-B, supplemental application of East Side Lines to Louisiana Public Service Commission, February 19, 1932 (R. 285–288).

18. Exhibit 5-C, supplemental application of East Side Lines to Louisiana Public Service Commission, March 21, 1932 (R. 297–298).

19. Notation of clerk as to exhibit duplication (R. 299).

20. Exhibit 8, statement showing estimate of increased revenue to Gulf Coast Lines (R. 300).

21. Exhibit 9, statement showing estimate of increased revenue to Missouri Pacific Lines (R. 301).

22. Exhibit 10, statement showing estimate of increased revenue to New Orleans & Lower Coast Railroad Co. (R. 302).

23. Exhibit 11, statement showing estimate of increased revenue to Texas & New Orleans Railroad Co. (R. 303).

24. Exhibit 12, statement showing estimate of increased revenue to Texas & Pacific Railway Co. (R. 304).

25. Exhibit 13, statement showing estimate of increased revenue to Louisiana & Arkansas Railway Co. (R. 305–307).

26. Exhibit 14, statement showing estimate of increased revenue to Kansas City Southern Railway Co. (R. 308–310).

27. Exhibit 15, statement showing estimate of increased revenue to Illinois Central System (R. 311).

436 28. Exhibit 16, statement of valuation of property of Illinois Central and Yazoo & Mississippi Valley Railroad Companies combined for the years 1921–1931, inclusive (R. 312).

29. Exhibit 17, statement showing property valuation of Illinois Central and Yazoo & Mississippi Valley Railroad Companies combined as per tentative valuation with operating figures for January, February, and March 1932 (R. 313).

30. Exhibit 18, statement of revenues and expenses of Illinois Central System for January, February, and March 1932, compared with similar figures for the three previous years (R. 314).

(Clerk will not print exhibit 19, master tariff of emergency charges, R. 315–347).

31. Exhibit 20, statement showing income and operating figures of each Louisiana railroad for the years 1929, 1930, and part of 1931 (R. 348–367).

(Clerk will not print maps, exhibits nos. 21 and 22.)

32. Exhibit 23, tabulation of Louisiana road projects (R. 370–371).

33. Exhibit 24, order no. 928 of Louisiana Public Service Commission, April 30, 1932, relative to sand and gravel rates (R. 372–376). (In printing the above item the clerk will omit appendices "A" and "B" giving details as to progress in projects.)

34. Exhibit 25, order of Arkansas Railroad Commission, February 4, 1931 (R. 380–381).

35. Exhibit 26, authority of Louisiana Public Service Commission to Illinois Central Railroad Company permitting reduction of rates on sand and gravel east of the Mississippi River of September 1, 1931, and letter of December 11, 1931 (R. 382–383).

437 36. Exhibit 27, order no. 628 of Louisiana Public Service Commission of April 30, 1932, relative to sand and gravel between Louisiana points east of the Mississippi River (R. 384–388).

37. Exhibit 28, statement of rates on sand and gravel between Mississippi points east of the river (R. 389–390).

38. Exhibit 29, statement of increases in rates (R. 391).

39. Exhibit 30, order no. 6728 of Mississippi Railroad Commission, Janauary 16, 1932 (R. 392–398).

40. Opinion of District Court rendered December 14, 1932 (R. 399–403).

41. Temporary injunction order, December 14, 1932 (R. 404).

42. Temporary injunction bond (R. 405). (Do not print bond or power of attorney in full, but recite in lieu thereof "Temporary injunction bond given by defendants and approved by Court.")

43. Stipulation for final submission of case (R. 407).

44. Final decree, December 27, 1932 (R. 408).

45. Petition for appeal, January 19, 1933 (R. 409–410).

46. Assignment of errors (R. 411–413).

47. Order allowing appeal (R. 414–415).

48. Notice of serving appeal papers (R. 416–417).

49. Notice to Attorney General of Louisiana (R. 418–419).

50. Præcipe for transcript of record (R. 420–422).

51. Citation on appeal (R. 423–424).

52. Appeal bond. (Do not print in full, but recite in lieu thereof "Appeal bond in sum of $1,000 approved by court January 19, 1932.")

438 53. Order extending time for docketing case in Supreme Court to April 1.

THOMAS D. THACHER,
Solicitor General.

ELMER B. COLLINS,
Special Assistant to the Attorney General.

NELSON THOMAS,
Attorney for Interstate Commerce Commission.

HARRY MCCALL,
Attorney for defendant railroad companies other than New Orleans & Northeastern Railroad Company.

J. BLANE MONROE,
By HARRY MCCALL,
Attorney for New Orleans & Northeastern Railroad Company.

Received copy of the above this 5th day of April, 1933.

WYLIE M. BARROW,
Attorney for Appellees.

439 [File endorsement omitted.]

[Endorsement on cover:] Enter Solicitor General. File no. 37516. E. Louisiana, D.C.U.S. Term no. 819. The United States of America, Interstate Commerce Commission, Texas & New Orleans Railroad Company, et al., appellants, vs. The State of Louisiana, Louisiana Public Service Commission, and Louisiana Highway Commission. Filed March 31, 1933. File no. 37516.

U. S. GOVERNMENT PRINTING OFFICE: 1933

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No. [redacted] 17

In the Supreme Court of the United States

OCTOBER TERM, 1932

UNITED STATES OF AMERICA ET AL., APPELLANTS

v.

STATE OF LOUISIANA ET AL., APPELLEES

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA

APPELLANTS' STATEMENT OF JURISDICTION

In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 819

UNITED STATES OF AMERICA ET AL., APPELLANTS

v.

STATE OF LOUISIANA ET AL., APPELLEES

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA

STATEMENT OF JURISDICTION

In compliance with Rule 12 of the Supreme Court of the United States, appellants submit herewith their statement showing the basis of the jurisdiction of this Court to entertain the appeal in the above-entitled cause:

A

STATUTES

The statutory jurisdiction of the Supreme Court to review by direct appeal the order or decree here complained of is conferred by Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 208, 219, 220; U.S.C. Title 28, Sec. 41 (28), Secs. 43 to 47), and Section 238 of the Judicial Code as amended by Act of February 13, 1925 (c. 229, 43 Stat. 936, 938; U.S.C. Title 28, Sec. 345).

B

DATE OF DECREE AND APPLICATION FOR APPEAL

The final decree sought to be reviewed was entered December 27, 1932 (R. —). The petition for appeal was presented to aforesaid District Court,

with this statement, on January 19, 1933, and the order allowing appeal was entered January 19, 1933.

C

NATURE OF THE CASE

This cause was instituted by a bill in equity filed by the State of Louisiana, the Louisiana Public Service Commission, and the Louisiana Highway Commission, seeking to enjoin an order issued November 7, 1932, by the Interstate Commerce Commission in I.C.C. Docket No. 25135, *Increases in Intrastate Rates and Charges, Part 5—Louisiana,* in which it directed carriers by railroad operating within the State of Louisiana (all of whom are appellants herein) to put in force and maintain for the transportation of certain commodities therein prescribed intrastate rates in Louisiana which should not be lower than rates contemporaneously in force and applicable to interstate transportation, plus the surcharge authorized by the findings of the Commission in *Fifteen Per Cent case,* 1931 (178 I.C.C. 539, 179 I.C.C. 215), on corresponding interstate traffic, so long as such surcharges are maintained on said interstate traffic in accordance with such findings, said order to become effective December 16, 1932. The specially constituted District Court of three judges granted an application of the said plaintiffs for an interlocutory injunction and filed an opinion holding the order of the Commission to be unlawful because not supported by findings essential to its validity.

D

CASES SUSTAINING JURISDICTION

The following decisions are believed to sustain the jurisdiction of this Court:

United States v. *Baltimore & Ohio Railroad Company et al.*, 284 U.S. 194.

Atchison, Topeka & Santa Fe Railway Company et al. v. *United States et al.*, 284 U.S. 248.

Georgia Public Service Commission v. *United States*, 283 U.S. 765.

Alabama v. *United States*, 283 U.S. 776.

Claiborne-Annapolis Ferry Company v. *United States*, 285 U.S. 382.

Respectfully submitted.

E. E. TALBOT,
United States Attorney.

ELMER B. COLLINS,
Special Assistant to the Attorney General.

NELSON THOMAS,
Attorney for Interstate Commerce Commission.

HARRY MCCALL,
Attorney for defendant railroad companies other than New Orleans & Northeastern Railroad Company.

J. BLANC MONROE,
Attorney for New Orleans & Northeastern Railroad Company.

U. S. GOVERNMENT PRINTING OFFICE: 1939

FILE COPY

No. 17

In the Supreme Court of the United States

OCTOBER TERM, 1933

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, TEXAS & NEW ORLEANS RAILROAD COMPANY ET AL., APPELLANTS

v.

STATE OF LOUISIANA, LOUISIANA PUBLIC SERVICE COMMISSION, LOUISIANA HIGHWAY COMMISSION ET AL., RESPONDENTS

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

SEPTEMBER, 1933

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In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 17

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, Texas & New Orleans Railroad Company et al., appellants,

v.

STATE OF LOUISIANA, LOUISIANA PUBLIC SERVICE COMMISSION, Louisiana Highway Commission et al., respondents.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

OPINIONS BELOW

The opinion of the specially-constituted District Court (R. 273) is reported in *State of Louisiana et al.* v. *United States et al.*, 2 F.Supp. 545. The report of the Interstate Commerce Commission (R. 11) is reported in *Increases in Intrastate Freight Rates (Part 5, Louisiana)*, 186 I.C.C. 615. Also involved are the report and supplemental report of the Commission (R. 62, 109) in *Fifteen Per Cent Case, 1931, Ex Parte,*

No. 103, *In the Matter of Freight Rates and Charges*, 178 I.C.C. 539, 179 I.C.C. 215.

JURISDICTION

The final decree of the District Court was entered December 27, 1932 (R. 278). Petition for appeal was filed January 19, 1933, and allowed the same day (R. 281). The jurisdiction of this court is founded upon the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 203, 219, 220 (U.S.C., Title 28, Sec. 47) and Section 283 of the Judicial Code, as amended by Act of February 13, 1925 (C. 229, 43 Stat. 936, 938 (U.S.C., Title 28, Sec. 345)).

QUESTIONS

Following the establishment of increases in interstate rates pursuant to authority granted in a "general revenue case" under section 15a of the Interstate Commerce Act (*Fifteen Per Cent Case, 1931*), and following the refusal of a State to permit carriers operating therein to make corresponding increases in a considerable body of their intrastate rates, the Interstate Commerce Commission, in a proceeding under section 13 (3) and (4) of said Act, entered an order requiring that the increases be made, to the end that said intrastate rates bear their just share of maintaining the transportation system.

The questions presented are (1) whether the order of the Commission was a valid exercise of its authority to remove unjust discrimination against interstate commerce caused by rates imposed by State authority, and (2) whether the Commission's findings of fact in support of its order were adequate.

STATUTES INVOLVED

The pertinent provisions of the Interstate Commerce Act are set forth in the Appendix.

STATEMENT

Nature of Appeal

This is a direct appeal by the United States, the Interstate Commerce Commission, and interstate carriers by railroad operating in Louisiana from a final decree (R. 278) of the District Court for the Eastern District of Louisiana, sitting as a specially constituted three-judge court, permanently enjoining and setting aside an order of the Commission.

The order in question

The Commission's order (R. 2) was issued in exercise of its power (Interstate Commerce Act, sec. 13 (3) and (4)), to remove unjust discrimination against interstate commerce caused by rates imposed by State authority; and it prescribed increases in the intrastate rates [1] of interstate railroads [2] operating in Louisiana in amounts equal to the increases in interstate rates on corresponding traffic that had been theretofore established by said railroads, pursuant to authority granted in *Fifteen Per Cent Case, 1931*, 178 I.C.C. 539, 179 I.C.C. 215.

[1] On traffic as to which the Louisiana Commission had refused to authorize increase in the rates—37 commodities and all less-than-carload traffic.

[2] Including railroads lying wholly within the State, if engaged in interstate commerce.

Proceedings before the Commission

The Commission proceeding, *Increases in Intrastate Freight Rates, Part 5—Louisiana*, 186 I.C.C. 615, in which the order was entered, was an outgrowth of the *Fifteen Per Cent Case, 1931*, just above mentioned. The latter was a "general revenue case" instituted in June 1931 by application of the railroads throughout the country asserting that an emergency existed and asking for authority to make a general increase of 15 per cent in their freight rates and charges. Specifically, the carriers sought special permission to file tariffs providing for such an increase in blanket supplement form, and a determination by the Commission that those tariffs, when so filed, might become effective without suspension.[3] Basically, they relied upon section 15a (2) of the Act, which provides that:

> In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish, or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient, and economical management and reasonable expenditures for main-

[3] Whenever the carriers file schedules proposing changes in their rates the Commission may, either upon complaint or its own initiative, enter upon a hearing in respect of the lawfulness thereof, and may pending the hearing suspend the schedules. Section 15 (7) I.C. Act. The carrier's application sought assurance in advance that this suspension power would not be exercised. Precedent for the relief sought and procedure followed is afforded by *Increased Rates, 1920*, 58 I.C.C. 220.

> tenance of way, structures, and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: *Provided*, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

The above was one of the interrelated provisions of the Transportation Act, 1920, imposing "an affirmative duty upon the Interstate Commerce Commission to fix rates and take other important steps to maintain an adequate railway service for the people of the United States. *Wisconsin R.R. Comm.* v. *C. B. & Q. R.R.*, 257 U.S. 563, 585.

Hearings on the application were held in various parts of the country during the summer of 1931. About 650 witnesses were heard and over 1,000 exhibits were introduced. The case was submitted September 30, 1931, after oral argument at Washington, D.C., lasting 9 days. Applications for like general increase in intrastate rates were pending before the rate regulating bodies of the States and upon invitation of the Commission, most of those bodies cooperated in the interstate proceeding through a selected committee of eight representatives, who sat with the Commission at the hearings and during oral argument, and participated in its deliberations preceding the decision. (R. 78.)

The evidence in support of the application was directed principally to the revenue needs of the railroads, and dealt with the railroads in the aggregate, or according to the three recognized territories, eastern, southern, and western. It shows that, commencing with the second half of the calendar year 1929, traffic had fallen off with progressive rapidity due to the general business depression and also, in very appreciable degree, to the increasing competition encountered from motor carriers, particularly for some kinds of traffic; and that as a result, and despite operating economies, including deep cuts in maintenance expenditures, net railway operating income had shrunk to a level in 1931 which it was estimated would not exceed $553,000,000 for the year,[4] or 2.25 percent on aggregate property value.[5]

The evidence further showed that among the railroads there were some whose earnings would be so reduced that their bonds would be no longer eligible [6] as investments for savings banks, insurance companies and trust companies; that there were others which were faced with the necessity of refinancing

[4] For Class 1 carriers.

[5] Ascertained by using as a base the aggregate carrier property value found in *Increased Rates, 1920*, 58 I.C.C. 220, 229, and adding thereto the net cost of additions and betterments subsequently made.

[6] For example, the New York savings bank standard specifies that earnings must have been 1.5 times fixed charges during 5 of the last 6 fiscal years preceding the investment, and in the fiscal year next preceding. Bonds previously acquired, however, would not necessarily have to be sold. (R. 80.)

large issues of bonds of early maturities; and that there were still others, of previous unquestioned financial standing, which would probably fail to earn all their interest requirements.

Evidence was introduced to show that under existing market conditions for securities, the normal channels of financing refunding operations and raising new capital were virtually closed to the railroads. There had been a serious decline in the value of railroad bonds, and particularly of the overlying and refunding bonds which, with few exceptions, were the only medium available on which the carriers could borrow money for refunding or other capital expenditures. And along with the decline in the market value of railroad bonds there had been a tremendous shrinkage in the market value of railroad stocks.

While the carriers recognized that all industries were suffering from the depression, they considered that an increase in their rates was justified as a measure vital to their credit standing and to stabilize an industry upon which all others were dependent. They also emphasized that the increase proposed would not produce additional income sufficient to raise their total return on aggregate property value to the full "fair return" of 5.75 percent,[7] and that, therefore, all that they were seeking was partial relief from the burdens confronting them. As estimated by them (R. 78) the 15 percent increase in rates sought would, if there were no consequent falling off

[7] Prescribed in *Reduced Rates, 1922*, 68 I.C.C. 676, as the fair return contemplated by sec. 15a (3), I.C. Act.

in traffic, produce additional revenue of $502,000,000 which, after income tax and other deductions, would raise net operating income to $985,000,000, or 4.01 percent on aggregate property value arrived at as aforesaid.

The carriers offered no evidence with respect to the rates on any particular commodity or kind of traffic. They offered virtually no evidence as to the effect which the proposed 15-percent rate increase would have on the movement of all or any traffic. They presented no witnesses familiar with traffic conditions and resisted the attempts of shippers to call their traffic officials to the stand (R. 79, 96). On the other hand, shipper interests, collectively representing the great bulk of the carriers' traffic (R. 87), presented "a mass of definite and concrete evidence" on the general industrial collapse, on the condition of individual industries, and as to the effect which a 15-percent rate increase would have on traffic and revenue (R. 97). And, as said by the Commission, it approached the "question with a background of experience with railroad rates, and the conditions under which they are made and can be maintained", much of it recently acquired in "extensive investigations of class rates and the rate adjustments on particular commodities" and "in extensive inquiries into motor transportation"[8] (R. 92).

[8] See *Coordination of Motor Transportation*, 182 I.C.C. 263.

The Commission's conclusion was that "a 15 percent increase in all freight rates and charges would increase revenues, if at all, only temporarily and that its ultimate effect, not very long postponed, would be to harm rather than help the railroads" and that, moreover, "such an increase would raise the rates upon many kinds of traffic above a just and reasonable level" (R. 97).

The Commission, however, suggested a substitute measure of relief under which much smaller increases on specified commodities would be allowed. The suggested increases varied from 6 to 12 cents per ton to 2 cents per 100 pounds, subject to a maximum increase of 10 percent in the charge on any shipment.[9] Certain commodities and particularly agricultural products [10] were altogether excluded and the increases on others were tempered (R. 98). The increases were to be superimposed upon the basic rates and were termed "surcharges." They were to expire March 31, 1933, unless extended beyond that time (R. 110).[11]

The Commission plan, as first suggested, imposed as a condition to the rate increases that the income therefrom be pooled for distribution in the first

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[9] The exact amounts of the increases are shown in the appendix to the supplemental report in the *Fifteen Per Cent Case*, 179 I.C.C. 215 (R. 130).

[10] Not all agricultural products were excluded, see List D in appendix authorizing an increase of 1 cent per 100 pounds on a long list of agricultural products (R. 132).

[11] The surcharges were extended until September 30, 1933 (191 I.C.C. 361).

instance among the carriers who fail to earn their fixed charges (R. 100). On petition of the carriers, representing that this plan could not as a practical matter be applied and asking that they be permitted to make distribution of the pooled money to carriers, failing to earn their fixed charges, on a loan basis, the Commission approved the rate increases without the imposition of the condition [12] (R. 111).

As above explained, technically this authority was in the form of special section 6 permission to file blanket supplements providing for the increases, and the Commission's assurance that they would be allowed to take effect without suspension. The authority granted was subject to the proviso—

> that the resulting rates will in all respects be subject to investigation and determination as to the lawfulness of particular rates, or schedules of rates, as provided by the Act (R. 16).

There was no finding that each and every rate so increased would be a reasonable rate. The findings were adapted to a case made under Section 15a for general increases in rates, the Commission stating, for example, that:

> revenues had become depleted to such an extent as to threaten the ability of the carriers to continue to furnish such transportation services as the public needs and must have. The freight articles selected by us in this connection were those for the transportation of

[12] The Commission stated, however, that it relied on the carriers to carry out their "loaning plan" (R. 113).

> which we believed the rates could be somewhat increased without causing the traffic to be transferred to other agencies of transportation and without bringing about an undue disturbance in business conditions or transgressing the bounds of maximum reasonable rates (R. 110).

The Commission estimated that the authorized increases would "produce between one hundred million and one hundred and twenty-five million dollars increased revenue if applied *both State and interstate*" which should, it believed, "cover deficiencies in interest on fixed interest obligations with a substantial balance left over" (R. 99, 15). (Italics ours.)

Pursuant to the permission granted, the railroads throughout the country, including those operating within the State of Louisiana, added the increases to their interstate rates, such increases becoming generally effective January 4, 1932. Most of the States authorized like increases in intrastate rates. In a few States, however, authority to make the increases was denied in whole or in part, whereupon the carriers filed petitions invoking the Commission's action under section 13 (3) and (4) of the Interstate Commerce Act. By order of April 4, 1932, the Commission instituted an investigation to determine whether the refusal of said States to permit the carriers to increase their "intrastate rates causes or will cause * * * any unjust discrimination against interstate or foreign commerce; and, if so, what rates shall

be prescribed to remove such unlawful * * * discrimination." All railroads subject to the jurisdiction of the Commission operating within those States were made respondents to the proceeding, and in each instance the State authorities were duly notified (R. 14).

The investigation was divided into several parts, one for each State whose rates and charges were brought into question. Each part was presented on its own separate record. Hearings in Part 5-Louisiana were held at New Orleans, commencing March 5, 1932, at which the State of Louisiana was represented by its Public Service Commission, its Highway Commission, and various shipping interests.

September 29, 1932, the Commission issued its report, *Increases in Intrastate Freight Rates*, 186 I.C.C. 615, dealing with all parts of the proceeding except three which had not then been heard. The report, after preliminary general discussion, reviews the evidence developed of record in each of the separate parts. Part 5-Louisiana is dealt with on pages 640 to 643 (R. 35–38). The Louisiana Commission had authorized the increases in part but refused to allow them on some 37 commodities and all less-than-carload traffic (R. 35). The Commission's ultimate finding was that in view of the surcharges which had become effective in the interstate rates on the classes and commodities involved in the proceeding, the respondents' intrastate rates in Louisiana on the same classes and commodities, to which no corresponding surcharges had been added, resulted

and would result in unjust discrimination against interstate commerce (R. 37). Pertinent subordinate findings supporting this ultimate finding were also made, and these are quoted and their sufficiency pointed out in a subsequent section of this brief.

At that time the Commission made no order but gave the State Commissions opportunity to permit the carriers in their several States to remove the unjust discrimination against interstate commerce by increasing their intrastate rates in the amount of the interstate surcharges. The Louisiana Commission declined to do so and on November 7, 1932, the order which is here sought to be enjoined was made and entered. (R. 2.)

Proceedings in Court Below

The bill of complaint to enjoin and set aside the order was filed November 16, 1932, by the State of Louisiana, the Louisiana Public Service Commission and the Louisiana Highway Commission. (R. 1.)

The United States and the Interstate Commerce Commission were named defendants. All the railroads affected intervened in defense of the order (R. 157, 158). The case was submitted to the Court upon the pleadings, the reports and orders of the Commission in the *Fifteen Per Cent Case, 1931* and the *State Rates Case*, and a certified copy of the testimony and exhibits introduced before the Commission in the latter case.

December 14, 1932, the Court rendered its opinion, holding that an interlocutory injunction should issue,

and on the same day entered its interlocutory decree (R. 273, 276). Following the filing of a stipulation that the hearing had might be considered as a final hearing of the case (R. 277) the Court, on December 27, 1932, entered its final decree making the interlocutory injunction perpetual (R. 278).

SPECIFICATION OF ERRORS

The following errors of the District Court are urged herein.

1. In setting aside, annulling, and permanently enjoining the Commission's order of November 7, 1932.

2. In holding that the Commission had not found that the interstate rates, to the level of which the Louisiana intrastate rates were ordered to be raised, were just and reasonable.

3. In holding that in a proceeding for a general increase in rates under section 15a the law requires that, before the same can be authorized, the Commission must find each and every rate to be just and reasonable.

4. In holding that findings, essential to support the order, were lacking.

5. In holding that the Commission did not find that the revenue of the carriers would be increased by the increases which it prescribed in the Louisiana intrastate rates.

6. In holding that the Commission's findings in respect of future effect of the increases in intrastate rates upon the carriers' revenues were insufficient to support the order.

7. In giving consideration to the fact that the increases in interstate rates were not required by mandatory order of the Commission but were instead only authorized.

8. In not dismissing the bill of complaint.

SUMMARY OF ARGUMENT

1. The Commission's order requiring that the State rates of interstate railroads within *Louisiana* be increased to correspond with the increases, established in their interstate rates pursuant to *Fifteen Per Cent Case, 1931*, was one for removal of unjust discrimination against interstate commerce in the sense of "preventing the depletion of interstate revenues by discriminating intrastate rates". *New England Divisions Case*, 261 U.S. 184, footnote, page 190. Furthermore, the Commission's action in ordering said State rates to be increased, as well as its earlier action authorizing the interstate increases, was in performance of the affirmative duty imposed on it by Transportation Act, 1920, "to fix rates and take other important steps to maintain an adequate railway service" for the country. *Wisconsin R.R. Comm.* v. *C., B. & Q. R.R.*, 257 U.S. 563, 585.

"Intrastate rates and the income from them must play a most important part in maintaining an adequate national railway system" (idem. 585). The States are using the interstate system for intrastate traffic and, if that traffic does not bear its just share of maintaining the system and so casts a dispropor-

tionate burden on interstate business, unjust discrimination against interstate commerce in a very real sense must be the result. The Commission's duty, under section 13 (4), to prescribe State rates that will cover their just share of the burden is thus seen to be in "dovetail relation" with its duty, under section 15a, to adjust interstate rates to secure to the carriers a fair return on interstate business, the both duties being intended to advance the Act's purpose that the national transportation system shall be adequately maintained (idem, 586, 587).

2. The lower court's holding that the Commission's order increasing the intrastate rates was invalid for the reason that it had never found the corresponding interstate rates, as increased pursuant to *Fifteen Per Cent Case, 1931*, to be reasonable rates, loses sight of the fact that the parent proceeding, *Fifteen Per Cent Case, 1931*, was a general-revenue proceeding authorizing general increases in interstate rates in performance of the Commission's affirmative duty to secure urgently needed revenue for maintenance of the national transportation system, and that the instant proceeding under section 13 (4) occupies a "dovetail relation" to the parent proceeding under section 15a. *Wisconsin R.R. Comm.* v. *C. B. & Q. R.R.*, 257 U.S. 563, 586.

Although there was no finding that each and every rate, so increased, would be a maximum reasonable rate, the Commission did, among other things, find that the freight articles selected for the increases "were those for the transportation of which we be-

lieved the rates could be somewhat increased without causing the traffic to be transferred to other agencies of transportation, and without bringing about an undue disturbance in business conditions, or transgressing the bounds of maximum reasonable rates."

In authorizing the increased interstate rates the Commission necessarily dealt with them in the aggregate or in broad classes but attached a saving clause to the effect that the resulting rates should be subject to investigation and determination as to the lawfulness of particular rates or schedules of rates. In thus dealing with rates it followed a method long recognized as necessary in such character of case and which must be regarded as sanctioned by section 15a since it had its origin in the emergency needs with which the national transportation system was faced in 1920. In *Increased Rates, 1920*, 58 I.C.C. 220, horizontal country-wide increases were authorized in similar manner. In state rates cases under section 13 (4), which grew out of the section 15a case, the interstate rates and the revenue needs of the national transportation system determined in this manner were used as bases determinative of the proportionate share to be borne by intrastate traffic. *Wisconsin R.R. Commission Case, supra. New York* v. *United States*, 257 U.S. 591.

Section 15a, in imposing upon the Commission the duty to make general adjustment of rates when need arises, must be taken to have authorized a method of procedure, making possible the task. Accordingly, the interstate rates, as increased in *Fifteen Per Cent*

Case, 1931, to meet the Act's remedial purpose, are not in this proceeding subject to be questioned on the ground that each and every one of them was not found to be a maximum reasonable rate. They must be regarded as reasonable and lawful rates for the purposes of the authorization, and in this proceeding, under section 13 (4), closely related to the parent proceeding under section 15a, said manner and method of determining the reasonableness of the rates must be regarded as valid for all purposes.

The Federal Commission, alone among the rate-regulating bodies, is under affirmative duty to secure necessary revenue for the national transportation system. In *Fifteen Per Cent Case, 1931*, it determined the amount necessary for the urgent needs there shown, not on the basis that interstate traffic would bear the whole burden but in contemplation that intrastate traffic would contribute its just share. It followed the same course in *Increased Rates, 1920, supra*, and under the doctrine of the *Wisconsin Case, supra*, this is the proper course. The great interference with the Act's remedial purpose which would be worked, if none, or comparatively few, of the States should contribute their proportionate share of a general increase is shown in the last-mentioned case.

3. The Commission's findings in support of its order as one to remove a revenue burden were adequate. It made the ultimate finding of unjust discrimination caused by the failure to increase the rates. It made a detailed statement of revenue out-

come taken from estimates of the carriers in the record as based on traffic for 1931. It discussed the testimony of shippers that traffic would be diverted to trucks by the rate increases, and in substance stated that the situation was about the same as in other parts of the country. It stated the opinion given by traffic men that, despite possible diversion of traffic, the rate increase would produce an increase in revenue.

In the preliminary part of its report the Commission stated that its finding of unjust discrimination in any of the cases was not to be taken as its positive conclusion of revenue effect. On this statement of the Commission the lower court based its conclusion that the Commission had not found that the rate increases would produce additional revenue. But we do not understand that the Commission's findings with respect to the future effect of rates upon revenues have to be positive in any character of case, and in this case it was dealing with a great body of rates under uncertain industrial conditions. The findings which the Commission did make were like those in the *Wisconsin Case*, which was a case of the same character, and those findings coupled with its ultimate finding that unjust discrimination would result constitutes, just as in the *Wisconsin Case*, its judgment that the increases would increase the carriers' revenues.

ARGUMENT

I

THE COMMISSION'S ORDER REQUIRING THAT THE STATE RATES OF INTERSTATE RAILROADS WITHIN LOUISIANA BE INCREASED TO CORRESPOND WITH INCREASES, ESTABLISHED IN THEIR INTERSTATE RATES PURSUANT TO *FIFTEEN PERCENT CASE, 1931*, WAS ENTERED TO PREVENT THE DEPLETION OF REVENUES OF CARRIERS SUBJECT TO THE INTERSTATE COMMERCE ACT AND IN PERFORMANCE OF THE AFFIRMATIVE DUTY IMPOSED ON THE COMMISSION BY TRANSPORTATION ACT, 1920, "TO FIX RATES AND TAKE OTHER IMPORTANT STEPS TO MAINTAIN AN ADEQUATE RAILWAY SERVICE."

The Act to Regulate Commerce, 1887, was designed principally to put an end to discrimination in railroad rates and service as between shippers and to prevent the charging of excessive rates. Its only provisions prior to 1920 "that enured to the benefit of the carriers were the requirements that rates should be reasonable in the sense of furnishing adequate compensation for the particular service rendered and abolition of rebates." *Wisconsin R.R. Comm.* v. *C. B. & Q. R.R.*, 257 U.S. 563, 585. Transportation Act, 1920, introduced the new policy of promoting, through regulatory legislation, an adequate and efficient transportation service for the country. The provisions of said Act, and the relation of each [13] to this great purpose, have been frequently discussed and explained in decisions of this court. "The most novel and most important feature" of the 1920 Act was section 15a (above quoted)

[13] See particularly *New England Divisions Case*, 261 U.S. 184, and footnote, page 190; *Dayton-Goose Creek Ry.* v. *U.S.*, 263 U.S. 456.

requiring the Commission "so to prescribe rates as to enable the carriers as a whole, or in groups selected by the Commission, to earn an aggregate annual net railway operating income equal to a fair return on the aggregate value of railway property used in transportaion." (Idem. 584.) This provision, and others in the 1920 Act, "imposed an affirmative duty on the * * * Commission to fix rates and take other important steps to maintain an adequate railway service for the people of the United States." (Idem. 585.) The new Act aimed "to give the owners of the railways an opportunity to earn enough to maintain their properties and equipment in such a state of efficiency that they can carry well this burden." *Dayton-Goose Creek Ry.* v. *U.S.*, 263 U.S. 456, 478. "The credit of the carriers, as a whole, had been seriously impaired. To preserve for the nation substantially the whole transportation system was deemed important. By many railroads funds were needed, not only for improvement and expansion of facilities, but for adequate maintenance. On some, continued operation would be impossible, unless additional revenues were procured." *New England Divisions Case,* 261 U.S. 189.

In addition to section 15a, other noteworthy provisions for the preserving of carrier revenue in the interest of an efficient transportation service were those empowering the Commission "to permit pooling of traffic and earnings; to fix minimum, as well as maximum, rates; and thus prevent cut-throat competition and the taking away of traffic from weaker

competitors; *to prevent the depletion of interstate revenues by discriminating intrastate rates* * * *" *New England Divisions Case*, 261 U.S. 184, footnote, page 190.

The provision last referred to (Sec. 13(3) and (4)) is the one directly involved in this case. It provides in part (text in Appendix) that:

> Whenever * * * the Commission, after full hearing, finds that any such rate, fare, * * * or practice (imposed by State authority) causes any undue * * * preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, *or any* * * * *unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful*, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such * * * discrimination * * *." Italics supplied.

Prior to the enactment of the above the Commission, acting under section 3, had in several cases found that State rates unduly preferred state shippers to the prejudice of interstate shippers, and had entered cease and desist orders *Shreveport Case*, 234 U.S. 342. But there was then no prohibition in the Act against "unjust discrimination against interstate

commerce" in the sense of State rates that fail to bear their just share of the burden of maintaining the carriers' revenues and the national transportation system. And there was then no power in the Commission to act directly on the State rates by prescribing the rates to remove the discrimination.

Following Transportation Act, 1920, which, among other things, terminated federal control, the carriers applied to the Commission for authority to make general increases in all rates and fares. As in *Fifteen Per Cent Case, 1931*, the technical relief sought was the Commission's approval of increases in advance of the filing of tariffs while basic reliance was placed upon section 15a and the new duty of the Commission to take affirmative steps to promote the welfare of the national transportation system. In its decision on the application, *Increased Rates, 1920*, 58 I.C.C. 220, 246, the Commission authorized horizontal increases in freight rates ranging from 25 to 40 percent depending upon designated territorial rate groups, and increases in all passenger fares and charges of 20 percent. Subsequently, corresponding increases in intrastate fares and rates were permitted to be established in most of the States. Some of the State rate regulating bodies, however, denied, either in whole or in part, the carriers' applications for authority to make the increases, whereupon the carriers invoked the Commission's jurisdiction under section 13 (4), above quoted. Several of the Commission's orders, entered in the proceedings which followed, were attacked in the courts and in each case which

reached this Court the Commission's order was upheld.[14]

In *Wisconsin R.R. Comm.* v. *C. B. & Q. R.R.*, 257 U.S. 563, this Court had before it for the first time an order of the Commission entered in a proceeding under section 13 (4) of the Act. The case involved the following facts: The Wisconsin Commission had permitted intrastate freight rates to be increased by the same percentage as had been established interstate pursuant to the findings in *Increased Rates, 1920, supra*, but had denied the 20 percent increase in passenger fares and excess-baggage charges and also the pullman surcharge on the ground that a state statute fixed a maximum of 2 cents a mile for passenger fares and charges. Actual intrastate fares were on the basis of 3 cents per mile under order of the Director General made during federal control, and the 20 percent increase would have raised the basis to 3.6 cents per mile. After their application to the State Commission had been denied the carriers invoked the federal commission's jurisdiction, and in the proceeding which followed[15] the Commission found that the failure to make the increases had resulted (1) in undue prejudice to interstate travelers and (2) in unjust discrimination

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[14] *Wisconsin R.R. Comm. Case, supra; New York* v. *United States*, 257 U.S. 591; *N.C. & St. L. Ry.* v. *Tennessee*, 262 U.S. 318. In *North Dakota* v. *C. & N.W. Ry.*, 257 U.S. 485, a bill was brought in this court to enjoin the railroads from complying with Commission order. It was dismissed on procedural grounds.

[15] *Wisconsin Passenger Fares*, 59 I.C.C. 391, 396.

against interstate commerce. Its order required the removal thereof "by increases in all intrastate passenger fares and excess-baggage charges and by surcharges corresponding with the increases and surcharges ordered in interstate business" (idem. 566). In the court suit [16] this order was upheld by the lower court, and the latter's decision was affirmed by this Court.

In the opinion in the case, this Court held that, although the showing of undue prejudice against interstate travellers was sufficient to justify the Commission's action as to a large class of fares, the order in its full scope could not be supported on the findings made of undue prejudice to interstate travellers. In its statewide application the order was upheld on the ground that the intrastate fares worked an unjust discrimination against interstate commerce as a whole, that is, discrimination in the sense that they were not producing their just share of carrier revenue necessary to adequately maintain the national transportation system. In reaching its decision this Court pointed out, as above mentioned, that Transportation Act, 1920, imposed on the Commission the new and affirmative duty to promote the maintenance of an adequate railway service for the country; that this duty was to be performed by fixing rates which would produce earnings enabling the carriers to pro-

[16] The suit was instituted by the railroads under section 266, Judicial Code, to enjoin the State Commission from interfering with the establishment of increases in compliance with the federal order.

vide such service and by exercise of other powers directed, broadly speaking, to the prevention of waste and promotion of economies.[17] As bearing directly on the Commission's enlarged power over intrastate rates in its relation to the new duty to affirmatively promote the maintenance of adequate railway service, the Court first emphasized that "intrastate rates and the income from them must play a most important part in maintaining an adequate national railway system" and that, if they are to be fixed at a substantially lower level than in interstate traffic, the share which the intrastate traffic will contribute will be proportionately less. Referring to the provision of section 15a that rates are to be adjusted to yield a fair return on aggregate property value, the opinion reads at page 586:

> * * * Section 15a confers no power on the Commission to deal with intrastate rates. What is done under that section is to be done by the Commission "in the exercise of its power to prescribe just and reasonable rates", i.e., powers derived from previous amendments to the Interstate Commerce Act, which have never been construed or used to embrace the prescribing of intrastate rates. When we turn to paragraph 4, section 13, however, and find the Commission for the first time vested with

[17] For example, the Commission powers to restrict construction, and to authorize abandonment, of unneeded lines and its powers to promote a fuller use of existing lines and, plant through joint use of lines and terminals, pooling of freight and earnings, car service, unifications or consolidations, etc.

> a direct power to remove "any undue, unreasonable, or unjust discrimination against interstate or foreign commerce", it is impossible to escape the dovetail relation between that provision and the purpose of section 15a. If that purpose is interfered with by a disparity of intrastate rates, the Commission is authorized to end the disparity by directly removing it, because it is plainly an "undue, unreasonable, or unjust discrimination against interstate or foreign commerce", within the ordinary meaning of those words.

In answer to the appellants' contention that the valuation required for the purposes of section 15a to be ascertained pursuant to section 19a of the Act covers only that part of the carriers' property which is used in interstate commerce and must be segregated from that used in intrastate commerce the opinion reads at page 587:

> * * * The language of section 15a refutes such interpretation. The percentage is to be calculated on "the aggregate value of the railway property of such carriers held for and used in the service of transportation." To impose on the Commission the duty of separating property used in the two services when so much of it is used in both, and to do this in a reasonably short time for practical use, as contemplated by the statute, would be to assign it a well-nigh impossible task. This, of itself, prevents our giving the words such a construction unless they clearly require it. They certainly do not.

"Congress in its control of its interstate commerce system," the Court said "is seeking in the Transportation Act to make the system adequate to the needs of the country by securing for it a reasonable compensatory return for all the work it does. The States are seeking to use that same system for intrastate traffic. That entails large duties and expenditures on the interstate commerce system which may burden it unless compensation is received for the intrastate business reasonably proportionate to that for the interstate business. Congress as the dominant controller of interstate commerce, may, therefore, restrain undue limitation of the earning power of the interstate commerce system in doing state work. The affirmative power of Congress in developing interstate commerce agencies is clear. (Citing cases.) In such development, it can impose any reasonable condition on a State's use of interstate carriers for intrastate commerce it deems necessary or desirable. This is because of the supremacy of the national power in this field" (idem. 589–590).

In the closing paragraph of the opinion it is said:

> It may well turn out that the effect of a general order in increasing all rates, like the one at bar, will, in particular localities, reduce income instead of increasing it, by discouraging patronage. Such cases would be within the saving clause of the order herein, and make proper an application to the Interstate Commerce Commission for appropriate exception, * * *

The above referred to a saving clause contained in the Commission's order, similar to that contained in the order now before this Court, and which provided that the order was made without prejudice to the right of the authorities of the State or of any other party in interest to apply in the proper manner for a modification of the order as to any specified intrastate fares or charges if the latter were not related to the interstate fares or charges in such a way as to contravene the provisions of the Interstate Commerce Act.

New York v. *United States*, 257 U.S. 591,[18] involved, similarly as in the *Wisconsin Case*, a Commission order which required increases in intrastate passenger fares and charges corresponding to the increases that had been established in interstate fares and charges pursuant to *Increased Rates, 1920*, 58 I.C.C. 220. In this case, too, the Court sustained the objection that there was not sufficient evidence of discrimination *against persons and localities* to justify the state-wide order, but held that the state-wide order was valid as removing an unjust discrimination against interstate commerce from the revenue standpoint. The Court said at page 601:

> If the lower level of intrastate fares and rates is to be maintained, it will discriminate against interstate commerce, in that it will require higher fares and rates in the interstate commerce of the State to secure the in-

[18] The court proceeding was different in that it was a direct suit under Urgent Deficiencies Act (38 Stat. 219) to set aside the Commission's order.

> come for which the Interstate Commerce Commission must attempt to provide by fixing rates under section 15a of the Interstate Commerce Act, as amended by section 422 of the Transportation Act of 1920, 41 Stat. 456, 488, in carrying out the declared congressional purpose "to provide the people of the United States with adequate transportation." As we have just held in the *Wisconsin Rate Case*, this constitutes "undue, unreasonable, or unjust discrimination against interstate . . . commerce", which is declared to be unlawful and prohibited by section 13, par. 4, of the Interstate Commerce Act, as amended by section 416 of the Transportation Act of 1920, 41 Stat. 456, 484, which the Inter-State Commerce Commission is authorized therein to remove by fixing intrastate rates for the purpose.

In recent decisions this Court has emphasized the necessity that intrastate traffic contribute its just share toward the cost of maintaining the national transportation system. In *Florida* v. *United States*, 282 U.S. 194, it was said at page 211:

> * * * As intrastate rates and the income from them must play a most important part in maintaining such a system, the effective operation of the act requires that intrastate traffic should pay "a fair proportionate share" of the cost of maintenance. * * *.

In *Louisiana* v. *United States*, 284 U.S. 125, this Court said at page 131:

> * * * and it (Congress) has empowered the Interstate Commerce Commission * * * to require the carriers to make and apply on intrastate traffic such reasonable charges as will produce its fair share of the amounts needed to pay operating expenses, provide an adequate railway system, and yield a reasonable rate of return on the value of the property used in the transportation service.

II

THE COMMISSION'S FINDINGS OF FACT FULLY SUPPORT ITS ORDER

1. The findings in support of the interstate rates, as increased by the surcharges, established those rates as lawful and reasonable for the Section 15a remedial purposes herein involved

One of the grounds on which the lower court held the order in this case to be invalid was that the interstate rates, as increased by the surcharges, "were never found to be just and reasonable." (R. 276.) The Commission's report in the *Intrastate Rates Case*, 186 I.C.C. 615, explains the nature of its findings in support of the general increases and for this reason it is here quoted from at some length. In this connection the report reads at page 619:

> There was no finding that each and every rate so increased would be a maximum reasonable rate, because a finding on this point was both impracticable and unnecessary. We did, however, state:
>
> "The freight articles selected by us in this connection were those for the transportation

of which we believed the rates could be somewhat increased without causing the traffic to be transferred to other agencies of transportation and without bringing about an undue disturbance in business conditions or transgressing the bounds of maximum reasonable rates."

* * * * *

In the administration of the Interstate Commerce Act a definite class of cases has come to be recognized where the paramount question is the general level of rates throughout the country or in territorial parts thereof, i.e., whether the aggregate revenues of the carriers shall be increased or reduced by a change in this general level. These are known as general revenue cases. For reasons which are apparent, it is impracticable in such proceedings to consider the individual rates. It is necessary to deal with rates in the aggregate or by broad classes, and the rights of shippers and carriers with respect to individual rates are protected by a saving clause which makes the general findings without prejudice to subsequent findings in individual situations. The Supreme Court has recognized the practical necessity of dealing with the general rate level in this way. For example, in New England Divisions case, 261 U.S. 184, at pages 197–198, the court referred with approval to the following passage from our report in New England Divisions, 66 I.C.C. 196,203:

"In all such general rate cases we have realized and have held that if we were required

> to consider the justness and reasonableness of each individual rate, the law would in effect be nullified and the commission reduced to a state of administrative paralysis."

The report here refers to *Increased Rates, 1920, supra*, and *Reduced Rates, 1922*, 68 I.C.C. 676, both of which were general-revenue cases and the first of which was the "parent" case involved in the *Wisconsin* and *New York State Rates Cases* above described. They are mentioned by the report in connection with *Brimstone R.R. Co.* v. *United States*, 276 U.S. 104, 123, in which the court said, in describing the findings in said cases:

> "Neither case approved 'any specific rate as reasonable in itself or as properly adjusted with respect to other rates nor did it justify in advance any rate which might be published as a result thereof.' In them the Commission was dealing with the whole body of rates throughout the country—was looking at the general level of all rates, and the propriety of rates to which the Brimstone Company was party was not the subject of particular investigation or consideration." [19]

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[19] The *Brimstone Case* involved section 15 (6) which empowers the Commission to prescribe divisions of joint rates for the past, e.g., retroactive divisions, whenever the joint rates were established pursuant to its finding or order The case held that joint rates, increased and reduced purusant to *Increased Rates, 1920*, and *Reduced Rates, 1922*, were not established pursuant to finding or order of the Commission. The court emphasized the rules that a statute, operating retroactively, should be strictly construed.

Continuing, the Commission's report reads:

> Ex Parte No. 103 also was a general-revenue case, and it dealt in the aggregate with broad classes of rates throughout the entire country. It approved general increases of those classes without consideration of individual rates and protected the rights of shippers and carriers with respect to such rates by the saving clause, already quoted, that the "resulting rates will in all respects be subject to investigation and determination as to the lawfulness of particular rates or schedules of rates, as provided by the act." Revenue considerations affecting the operations of the carriers in their entirety, both intrastate and interstate, were paramount in the findings, and the existing rates to which it was contemplated that the increases would be applied were the result of a comprehensive system of public regulation which had been in force, in both the Nation and the States, for many years (R. 16–17).

Bearing on the same point, the Commission's report later reads at page 624:

> In *Georgia Comm.* v. *United States*, 283 U.S. 765, 770, the court said:
>
> "It is true that when State rates are assailed on the ground that they result in undue prejudice to interstate shippers or discrimination against interstate commerce, the Commission must determine whether the existing interstate rates are reasonable, as it may not require intrastate rates to be raised above a reasonable level. * * *"

* * * As before indicated, we made no finding that each and every rate would be reasonable because such a finding was both impracticable and unnecessary. We did state that the freight articles selected for the application of the surcharges were those for the transportation of which we believed the rates could be somewhat increased without transgressing the bounds of maximum reasonable rates.

The important thing is the principle underlying the statement above quoted from the Georgia case. * * * The Georgia case did not emanate from a general-revenue case and dealt chiefly with "undue prejudice and discrimination to interstate shippers and localities", as is made clear by the comments on page 773 of the court's opinion. When a "disparity of intrastate rates" is found to exist, the question is whether it is just and right that this disparity should be corrected by requiring an increase in State rates. Obviously this should not be done unless the fault lies in those rates. If the fault is in the interstate rates, it is they which should be changed. Where specific rates are in issue and no general increase in the level of rates to meet revenue needs is involved, plainly the fault is to be located by applying the yardstick of interstate rates definitely found to be reasonable. Where the disparity is the outgrowth of a general-revenue case in which rates were dealt with in the aggregate or by general classes, the fault cannot be so located. Nevertheless it is possible to apply the same test to the intrastate

> rates as was applied to the interstate rates, and this is, we believe, the essential principle to be followed. To do otherwise would, as the court suggested in the Wisconsin case, "completely block the remedial purpose of the statute." Manifestly both classes of rates must be dealt with in the same way, and subject to similar reservations protecting the future, if the transportation needs of the country are to be met, to say nothing of the extraordinary conditions and the serious financial emergency by which we were confronted in Ex Parte No. 103 (R. 20–21).

What is above said as to the impracticability in a general-revenue case of dealing with the rates as individual rates is not new. This court and all concerned are familiar with the manner in which the Commission dealt with interstate rates in *Increased Rates, 1920, supra.* And in the first *State Rate Case* growing out of that case, *The New York Passenger Fares Case,* 59 I.C.C. 290 (sustained in *New York* v. *United States, supra*), it was explained, as in the instant case, that the rates could not be dealt with as individual rates,[20] the Commission saying at page 294:

> This proceeding presents a practical question which we have endeavored to deal with in a practical way. The needs of these interstate carriers for revenue to enable them to provide adequate transportation service and facilities

[20] The fact that the rates were not dealt with as individual rates is emphasized in Commissioner Eastman's dissent. 59 I.C.C. 303.

> are immediate and, in the interest of the public, cannot be permitted to await the consideration in detail of individual fares, charges, and rates. The record shows that the respondent carriers perform the services here in question under substantially similar circumstances and conditions, whether in respect of interstate or intrastate transportation; and that the lower basis of intrastate fares, charges, and rates results in undue prejudice against interstate passengers and shippers and unjust discrimination against interstate commerce. The present record warrants the findings hereinafter made. Those findings are without prejudice to the right of the authorities of the state of New York or of any other interested party, to apply in the proper manner for a modification of our findings and order as to any fares, charges, or rates on the ground that the latter are not related to the interstate fares, charges, or rates in such a way as to contravene the provisions of the interstate commerce act.

The above saving clause in the *New York Fares Case* in respect of individual fares or rates is substantially the same as that attached to the findings in the present case.

Reverting, then, to the interstate rates in the present case, as the Commission plainly states, they were not dealt with as individual rates. The *Fifteen Per Cent Case, 1931*, being a general-revenue case of great urgency and involving literally thousands of individual rates the Commission "dealt in the aggregate with broad classes of rates" approving "general increases

of those classes without consideration of individual rates" but protecting the rights of shippers and carriers by a saving clause similar to that in the *state rates cases*, namely, that "the resulting rates will in all respects be subject to investigation and determination as to the lawfulness of particular rates or schedules of rates as provided by the Act" (R. 17).

The record made in the case was exhaustive. The evidence introduced by the carriers and by the security holders' committee, while largely confined to the revenue needs and impaired credit of the railroads, was comprehensive on these vital issues. And, due to the vigorous opposition of shippers representing the great bulk of the carriers' traffic, the Commission had before it a mass of "definite and concrete" evidence on the effect of rate increases on the traffic. As said by the Commission:

> "It is not inappropriate to say that we approach this question with a background of experience with railroad rates and the conditions under which they are made and can be maintained. We deal with hundreds of rate complaints every year, and in recent years have, in addition, carried on most extensive investigation of class rates and the rate adjustments on particular commodities. Evidence as to commercial and industrial conditions has been prominent in all of these investigations. We have also made extensive inquiries into motor transportation and are informed in regard to transportation by waterways and pipe lines, and we know the extent to which the

railroads have reduced rates to meet such competition" (R. 92).

Only a reading of the Commission's two reports can fully portray all the matters and elements considered. The question of the reasonableness of the rates was at all times before it, and necessarily so because of the effect of rate increases on "distressed industry." The question of the so-called "revenue effect" of a rate increase, i.e., whether a rate increase would "drive traffic from the rails" was also at all times a matter for particular consideration and investigation.

Among other of the Commission's findings in support of the rate increases, the following should be emphasized: That, due to the industrial depression and the rapid development since the depression began of other competitive forms of transportation, the carriers' revenues had become depleted to such an extent as to threaten their ability to continue to furnish such transportation services as the public needs and must have (R. 110); that the carriers' credit had become impaired and their securities subject to distrust verging on panic (R. 98); that "the freight articles selected by us in this connection were those for the transportation of which we believed the rates could be somewhat increased without causing the traffic to be transferred to other agencies of transportation and without bringing about an undue disturbance in business conditions or transgressing the bounds of maximum reasonable rates" (R. 110); and that the carriers

should be authorized to make the specified increases (R. 110).

The above findings amply support the urgent need for additional revenue. They support the increased rates as reasonable rates with all the certainty practicable or necessary in a general-revenue case, where rates are dealt with in broad classes. And, furthermore, the Commission found that they should be, and they were in fact, authorized.

Section 15a must be, and has been, construed as authorizing just such general rate increases as were here found necessary. It originated out of the emergency needs with which the transportation system was confronted in 1920; and as soon as possible following its enactment, the general increases in *Increased Rates, 1920, supra*, were authorized. Since it must be construed as authorizing general revenue proceedings—that is, proceedings for general increases in the rates—it must by the same token have authorized that a practicable procedure be followed, making possible the task. Compare *Wisconsin Case, supra*, 588.

Accordingly, the interstate rates, as increased in *Fifteen Per Cent Case, 1931*, to meet the Act's remedial purpose, are not, in this proceeding, subject to be questioned on the ground that each and every one of them was not found to be a maximum reasonable rate. They were authorized by the Commission in performance of its duty under mandate of section 15a of the Act, and by a method and procedure contemplated by said section and for many years recognized

to be absolutely necessary in a general-revenue case. In this proceeding, under section 13 (4), which is in "dovetail relation" (*Wisconsin Case, supra*) with the parent proceeding under section 15a, it is inescapable that said manner and method of determining the lawfulness and reasonableness which was used in said parent proceeding for purpose of authorizing the interstate increases must be regarded as a valid manner and method of authorizing them, and, therefore, in no wise invalidating the interstate rates for any use within the section 15a remedial purpose.

The Federal Commission, alone among the rate-regulating bodies, is under affirmative duty to secure necessary revenue for the national system whether in times of emergency or at any other time. It determined to the best of its ability the amount of revenue which would meet those urgent needs and at the same time not impose unreasonable rate increases on the traffic selected. It will have been already noted that, in determining the amount of the interstate increase, the Commission assumed that intrastate traffic would contribute its just share. Plainly, under the doctrine of the *Wisconsin case, supra*, the Commission is not expected, in a general-revenue case, to prescribe increases in the interstate rates that will yield the whole needed additional revenue, without reliance on intrastate traffic for its just contribution. If it had to do this as a prerequisite to discrimination proceedings under section 13 (4), i.e., if it had to fix interstate rates in the first instance to include the share justly to be

borne by intrastate traffic and thereafter enforce contribution by the forty-eight States, it would logically follow that when the States had been required to increase their rates the interstate rates would have to be readjusted downward, and, perhaps, by successive steps.

In *Increased Rates; 1920, supra,* as well as in the *Fifteen Per Cent Case, 1931,* the Commission fixed the interstate increases in contemplation that corresponding intrastate increases would be made, and in most States that expectation was realized. So that in those instances where the increases were not allowed, the proceedings to remove the unjust discrimination was, in nature, a fulfilment of the parent case under section 15a and a rounding out of the Acts remedial purpose. The great interference with that purpose which could have been worked if none, or comparatively few, of the States had borne their portionate share, is readily apparent.

It is believed that in giving proper effect to the Act's remedial purpose it is of the utmost importance that it be kept constantly in mind, that, as above said, the Federal Commission, alone among the rate-regulating bodies, has the affirmative duty to secure, through rates adjusted to that end, adequate revenue for the national transportation system. This, when the Commission is called upon to make urgent general rate adjustments, is not rate regulation in the old section 1 meticulous sense. On the contrary, it will be readily appreciated that duties are imposed of countrywide scope and which must be performed, if

at all, in a manner corresponding to their scope. All this, it appears to us, was comprehended in, and recognized by, the Court's decision in the *Wisconsin case, supra.*

2. The Commission's findings in support of the order as one to remove a revenue burden were adequate

Another ground given by the lower court for its holding that the order was invalid was that it lacked the finding that the prescribed rate increases will for the future increase the carriers' revenues (R. 276).

The Commission's ultimate finding of unjust discrimination reads:

> We find that in view of the surcharges which have become effective interstate in the freight rates on the classes and commodities here in question, under our findings in *Fifteen Per Cent case, 1931*, supra, respondents' intrastate rates in Louisiana on the same classes and commodities, to which no corresponding surcharges have been added, have resulted and will result in unjust discrimination against interstate commerce, except in the case of the intrastate rates on sugarcane. We further find that this unjust discrimination shall be removed by applying to the present interstate rates in Louisiana on the said classes and commodities, except sugarcane, the same surcharges as are and for the future may be contemporaneously maintained by respondents, in accordance with the findings in *Fifteen Per Cent Case, 1931*, supra, on corresponding interstate traffic. (R. 37–38.)

This was followed by the saving clause, above mentioned, similar to that in the *Wisconsin case.*

Supporting its ultimate finding of unjust discrimination the Commission made the following statement from the evidence of record:

> . It is estimated that, based on the traffic of 1931, the application of the surcharges on the excepted commodities would produce additional annual revenue of $26,420 to the Gulf Coast Lines, $53,470 to the Missouri Pacific Railroad Company, $1,848 to the New Orleans and Lower Coast Railroad Company, $108,442 to the Texas & New Orleans Railroad Company, $92,198 to the Texas & Pacific Railway Company, $12,493 to the Kansas City Southern Railway Company, and $101,798 to the Illinois Central. The Louisiana & Arkansas Railway Company would receive $37,911 additional revenue on sand, gravel and crushed stone. Railroad traffic men expressed the opinion that, notwithstanding possible diversion of traffic to other transportation agencies, the addition of the surcharge to the intrastate rates would produce an increase in revenue. (R. 35.)

The above estimates were all supported by separate exhibits of the carriers named (R. 224–230), which were introduced by experienced traffic officials of the railroads.

In *Wisconsin Passenger Fares,* 59 I.C.C. 391, 393, the Commission's finding was:

> Evidence offered by the carriers indicates that if the present intrastate fares are con-

> tinued for one year and if there is the same intrastate travel during that year as in the calendar year 1919, the direct loss to the carriers due to their failure to secure the 20 percent increase in intrastate fares will approximate $2,400,000, and if the 2-cent intrastate fare should become effective the loss would be approximately $6,000,000.

This Court held that this finding was sufficient to sustain the Commission's statewide order. In the *Wisconsin case*, 257 U.S. 563, the Court said at page 580:

> "The report of the Commission shows that if the intrastate passenger fares in Wisconsin are to be limited by the statute of that State to 2 cents per mile and charges for extra baggage and sleeping car accommodations are to be reduced in a corresponding degree, the net income of the interstate carriers of the State will be cut six millions of dollars below what it would be under intrastate rates on the same level with interstate rates." (*Ibid.*, 580.)

Later, in *Florida* v. *United States*, 282 U.S. 194, the Court, referring to the *Wisconsin case*, said:

> "Thus, in *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy Railroad Company, supra*, (at p. 566) where the question related to the general level of intrastate passenger fares, there were findings as to the effect of the maintenance of the intrastate fares upon the revenues of the carriers, warranting the ultimate finding of undue discrimination against interstate commerce as a whole."

It is true that the Commission's order involved in the *Florida Case*—an order prescribing intrastate rates on logs—was held invalid for lack of findings that the increased rates would produce, or were likely to produce, additional income. But in that case there was total absence of anything of the kind in the report.[21] Instituted by the Georgia Public Service Commission, the case was essentially one of undue prejudice against interstate shippers and confined by the evidence at least to northern Florida. It was peculiar to itself in many other respects. Finally, since it involved but one railroad and one commodity, it was not, like the *Wisconsin Case* and the present case, an outgrowth of a general revenue proceeding to meet emergency needs of the national transportation system.

Because the instant case was of general revenue character involving many commodities and innumerable rates, and because of the urgent transportation needs, even more pressing than in the *Wisconsin Case*, it is believed that the question as to whether the Commission has made adequate findings of future revenue to be derived from the increases should be

[21] Findings as to revenue effect of increases, not much different from those in the present case, will be found in the Commission's reports involved in *Georgia P. S. Com.* v. *U.S.*, 283 U.S. 765; *Alabama* v. *U.S.*, 283 U.S. 776; *Louisiana P. S. Com.* v. *Tx. & N. O. R.R.*, 284 U.S. 125. The first two-named cases involved particularly discrimination against interstate shippers, but the orders were also supported on the revenue findings. The last case was sustainable in its state-wide application—that is, in southern Louisiana—only on the revenue burden feature.

judged, not by the *Florida Case* but by its reports involved in the *Wisconsin Case, supra*, and *New York* v. *United States, supra*.

The lower court points to the fact that the Commission, in the preliminary part of its report, stated that where it made a finding of unjust discrimination and required an increase in the interstate rates, it was to be understood that it concluded that no positive finding in regard to the revenue outcome of the increase could be justified. (276) Even in a case like the *Florida Case* we do not understand that findings of revenue outcome must be positive. But the important thing to be kept in mind is again that the Commission was dealing with the body of many rates. Pressed upon it by shippers and state commission, similarly as in each and every state case, that traffic would be stifled by the rate increases or diverted to trucks and the like; yet it had before it the expert opinion of railroad traffic men, whose everyday problems were just such problems, that the surcharges would produce an increase in revenue. Coupled with the Commission's statement of the detailed estimates of revenue that would be derived, the following is part of its findings as to future revenue effects, namely:

> There is nothing of record which warrants the conclusion that the situation as to fertilizer, cottonseed, cottonseed products, fresh vegetables, or sweet potatoes is different in Louisiana from what it is in other parts of the country, or in surrounding states, where

> surcharges are now being assessed. Similar allegations with respect to the probable effect of truck competition and as to the inability of various commodities to stand any increase, were made in Ex Parte No. 103, and were considered in reaching our conclusions. Nor is there anything to show that the movement of sweet potatoes will be adversely affected by the application of a surcharge thereon without a similar charge on other potatoes.

Coupled with its statements of the detailed estimates of revenue outcome and its statement just above quoted, the Commission's ultimate finding that unjust discrimination would result, constitutes, just as in the *Wisconsin Case*, its best judgment that the increases would for the future increase the carriers' revenues.

III

THE FACT THAT THE INTERSTATE RATES, AS INCREASED BY THE SURCHARGES, WERE ONLY AUTHORIZED WHEREAS THE INTRASTATE RATES WERE ORDERED TO BE INCREASED IN NOWISE AFFECTS THE VALIDITY OF THE ORDER

As further grounds for its conclusion that the Commission's order was invalid, the lower court points to the fact that the Commission "made no order requiring the carriers to apply their proposed interstate surcharges but only granted them permission to do so or not as they elected." (R. 276.) This has reference, doubtless, to the contrast dwelt upon by opposing counsel arising from the fact that the Com-

mission, in operating upon the intrastate rates had done so by mandatory order requiring the increases.

Where a state is opposing an increase in intrastate rates the natural course is for the Commission to use its minimum rate power. Section 13 (4) empowers the Commission to increase the rate by fixing the precise rate or by a minimum rate order such as here entered.

In the *Wisconsin case*, an outgrowth of *Increased Rates, 1920, supra*, the interstate fares and charges were established under just such permissive authority as was here granted to the carriers. That was also true of every other state case growing out of *Increased Rates, 1920*, several of which were never the subject matter of court suit. There are few, if any, intrastate rate cases in which the interstate rates were fixed by minimum rate orders, or otherwise than as maxima rates. On the other hand, the intrastate rates are always prescribed as minima. Where interstate rates are fixed as maxima there is no constraint in so far as the order is concerned, upon the carriers reducing the rates. Whether it be under a maximum rate order or pursuant to authorization as here, the matter of importance is that the rates are established pursuant to determination of the Commission.

Georgia P. S. Com. v. *United States*, 283 U.S. 765, and *Alabama* v. *United States*, 283 U.S. 778, are familiar examples of cases where the interstate rates were prescribed as maxima and the intrastate rates as minima.

The Commission has always been reluctant to use its minimum rate power whether with respect to interstate rates or intrastate rates and except for special situations its universal policy has been to prescribe interstate rates as maxima. Its reluctance to fix intrastate rates at all by order is shown by the fact that in almost every intrastate case it has first issued its report and finding and only issued an order when it became apparent that the state authorities would not comply with the findings.

CONCLUSION

It is respectfully submitted that the decree of the court below should be reversed with directions to dismiss the bill for want of equity.

J. CRAWFORD BIGGS,
Solicitor General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
DANIEL W. KNOWLTON,
Chief Counsel.
NELSON THOMAS,
Attorney for Interstate Commerce Commission.

APPENDIX

Pertinent provisions of the Interstate Commerce Act (24 Stat. 379), as amended by the Transportation Act of 1920 (41 Stat. 456), are:

SEC. 13. (3) Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, * * * there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, * * * the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this Act with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, * * * to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this Act. (41 Stat. 456, 484.)

(4) Whenever in any such investigation the Commission, after full hearing, finds that any

such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers, parties to such proceedings affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding. (41 Stat. 456, 484.)

SEC. 15*a*. (2) In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment, earn an aggregate annual net railway operating income, equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: *Provided*, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to

prescribe different rates for different sections of the country.

(3) The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such percentage shall be uniform for all rate groups or territories which may be designated by the Commission. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient, and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation: * * * (41 Stat. 456, 488).

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CHARLES ELMORE CR
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933.

No. 17

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, TEXAS & NEW ORLEANS RAILROAD COMPANY, ET ALS.,

Appellants,

versus

STATE OF LOUISIANA, LOUISIANA PUBLIC SERVICE COMMISSION, LOUISIANA HIGHWAY COMMISSION, ET AL.;

Respondents.

Appeal from the District Court of the United States for the Eastern District of Louisiana.

CONCURRENCE OF APPELLANT RAILROADS IN BRIEF FILED HEREIN ON BEHALF OF THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION.

J. BLANC MONROE,
Attorney for New Orleans & Northeastern Railroad Company;

HARRY McCALL,
Attorney for Railroads Other Than New Orleans & Northeastern Railroad Company.

Montgomery-Andree Printing Co., Inc., 430-32 Chartres, N. O. La.

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The railroads, appellants herein, propose to file no separate brief of their own, and hereby adopt as theirs,

and concur in, the brief filed on behalf of the United States and the Interstate Commerce Commission.

Respectfully submitted,

J. BLANC MONROE,
Attorney for New Orleans & Northeastern Railroad Company;

HARRY McCALL,
Attorney for Railroads Other Than New Orleans & Northeastern Railroad Company.

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No. 17

Supreme Court of the United States

OCTOBER TERM, 1933

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, TEXAS & NEW ORLEANS RAILROAD COMPANY, ET AL.,

Appellants,

versus

THE STATE OF LOUISIANA, LOUISIANA PUBLIC SERVICE COMMISSION, AND THE LOUISIANA HIGHWAY COMMISSION.

Appeal from the District Court of the United States for the Eastern District of Louisiana, Honorable Rufus E. Foster, Circuit Judge, and Honorables Wayne G. Borah and Allen Cox, District Judges, Sitting as a Special Court.

BRIEF ON BEHALF OF THE STATE OF LOUISIANA, LOUISIANA PUBLIC SERVICE COMMISSION, AND THE LOUISIANA HIGHWAY COMMISSION, APPELLEES.

(Report of the Commisison, 186 I.C.C. 615, R. 35-38.)

(Opinion below. *State of Louisiana, et al. v. United States*, 2 F. Supp. 545. R. 273.)

May It Please the Court:

This suit was brought by the State of Louisiana, the Louisiana Public Service Commission, and the Louisiana Highway Commission, to enjoin, set aside and annul the order of the Interstate Commerce Commission issued November 7, 1932, in the proceeding before the Commission

numbered and entitled *"No. 25,135, Increases in Intrastate Freight Rates and Charges, Part 5, Louisiana."* The orders in controversy are as follows:

"ORDER

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 7th day of November, A. D. 1932

No. 25135

Increases in intrastate freight rates and charges, Part 5—Louisiana

It appearing, That by order dated April 4, 1932, the commission upon petition of various carriers entered upon an investigation under Docket No. 25135, to which investigation all railroads subject to the jurisdiction of the commission within the several States designated in said order were made respondents, and that the investigation was divided into several separate parts, one for each State whose rates and charges were brought into question, and that the commission on September 29, 1932, made and filed its report in the above-entitled proceeding, containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof, and cause appearing therefore:

It is ordered, That the respondents herein, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist from practicing the unjust discrimination against interstate commerce found in said report to exist, and to establish, put in force, and maintain for the transportation of said, gravel, shells, crushed stone, and similar road-building materials; salt cake; fertilizer and fertilizer materials; cottonseed cake, meal, bran, hulls, and meats; pulpwood; stave bolts; refined sugar; sweet-potatoes; fresh vegetables; pulverized limestone; waste

wood; second-hand sugar bags; waste paper; soya beans, velvet beans, Austrian winter peas, and cow peas; rosin sizing; potash nitrate; sirup and molasses; blackstrap molasses; crude fire clay; clay, n.o.i.b.n.; charcoal; bolts; and all less-than-carload traffic in intrastate commerce within the State of Louisiana, **rates which shall be not lower than the rates now in force and applicable to the intrastate transportation of said traffic within the State of Louisiana, plus the surcharges authorized by the findings in *Fifteen Percent* case 1931, 178 I.C.C. 539, and 179 I.C.C. 215, on corresponding interstate traffic so long as such surcharges are maintained on such traffic in accordance with said findings.**

It is further ordered, That this order shall become effective on December 16, 1932; that respondents shall comply therewith upon not less than one day's notice to this Commission and to the general public by filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act; and that **it shall remain in force until the further order of the Commission.** (Our emphasis.)

GEORGE B. McGINTY,
Secretary.

ORDER

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 7th day of November, A. D. 1932

No. 25135

Increases in intrastate freight rates and charges, Part 5—Louisiana

Upon further consideration of the record in the above-entitled proceeding, and upon consideration of petition on behalf of the New Orleans Joint Traffic Bureau to amend and modify the findings herein so as to exempt raw sugar and bagasse, or, if such exemption cannot be made upon the present record, to reopen the proceeding for further hearing with respect to these commodities:

It is ordered, That the above-entitled proceed-

ing be, and it is hereby, reopened for further hearing with respect to raw sugar and bagasse at such time and place as the Commission may hereafter direct.

By the Commission.

GEORGE B. McGINTY,
Secretary."

(Seal)

(R. 2, 3.)

The report of the Commission is printed on pages 11-62, and that part dealing with Louisiana, Part 5, is printed on pages 35-38, of the record.

The suit was brought under the *Urgent Deficiencies Act*, October 22, 1913, ch. 32, 38 Stat. at L. 203, 219, 220, U. S. Code title 28, Sec. 47, and Jud. Code, Sec. 283, as amended February 13, 1925 (c. 229, 43 Stat. 936, 938 (U. S. C. title 28, Sec. 345), in the United States District Court for the Eastern District of Louisiana, and was heard by a special three-judge court composed of Circuit Judge Foster, and District Judges Borah and Cox, on an application for an interlocutory injunction which was granted. (R. 273, 277.)

The case was submitted on final hearing before the same court under a stipulation among counsel for the plaintiffs, defendants, and interveners, that the case be disposed of upon the pleadings, exhibits, evidence, briefs and arguments of counsel, presented at the preliminary hearing. (R. 277.)

The final decree was entered on December 22, 1932, denying the prayers of the United States and of the Interstate Commerce Commission, and the intervening railroads, to dismiss the petition, and making the preliminary injunction perpetual. (R. 278.)

The appeal was brought direct to the Supreme Court.

(U. S. Code, title 28, sec. 47, p. 869, Act of October 22, 1913, c. 32, 38 Stat. 220.)

No stay of the decree pending the appeal was sought or granted.

HISTORICAL STATEMENT.

Proceedings in Fifteen Per Cent Case, 1931.

On June 17, 1931, the railroads of the United States filed with the Interstate Commerce Commission their petition for authority to make a general increase of fifteen per cent in all interstate freight rates. The proceeding before the Commission was designated as *"Ex Parte 103, Fifteen Per Cent Case, 1931."* (178 I.C.C. 539, 179 I.C.C. 215, 191 I.C.C. 361.)

The application was filed under Section 6 of the Interstate Commerce Act, and requested authority to depart from the ordinary rules of the Commission governing tariff publication, coupled with the request that the Commission reach the conclusion, after investigation, that if the contemplated tariffs were filed, they would not be suspended. (R. 81.)

In due course, after hearing, the Commission rendered an opinion dated October 16, 1931, in which the increases applied for were denied upon two grounds, namely, (1), **"that such increase in all freight rates and charges would increase revenue, if at all, only temporarily and that its ultimate effect, not very long postponed, would be to harm rather than to help the railroads,"** and (2), **"that such an increase would raise the rates upon many kinds of traffic above a just and reasonable level."** (R. 97.)

Having denied such increase, the Commission **"for the purpose of increasing confidence and averting developments which might further disturb an already tremend-**

ously shaken financial situation, and to avoid impairment of an adequate system of transportation," stated:

> "It does not follow, however, from the conclusions above set forth that no increase in rates should be made at this time. As a result of investigations extending over many months we have prescribed, effective December 3, 1931, maximum reasonable rates on class traffic in official and western trunk-line territories and between those territories whose net effect we believe will be a substantial increase in revenue, unless diversions to trucks attain unanticipated proportions. We have also prescribed maximum reasonable rates throughout the country on furniture, effective February 25, 1932, which may produce increased revenue, although the danger of diversion to trucks is greater in the case of furniture than in the case of class traffic taken as a whole. We have also prescribed maximum reasonable rates on livestock in the western district, effective January 25, 1932, which should increase the revenue from this traffic in western trunk-line territory, where the revenues of the railroads have been particularly low. A similar revision, in general upward and effective December 3, 1931, has been prescribed in the case of petroleum and petroleum products.
>
> In addition to these pending revisions and others which are in progress on our docket, we believe that the traffic departments of the railroads should address themselves to the task of making such changes in the rates on particular kinds of traffic as will, in their judgment after careful analysis of all attendant circumstances, produce additional revenue and which can be supported as reasonable under existing conditions. This does not necessarily mean increases in rates. It is quite likely that there are now many rates which will produce more revenue if they are reduced, and we

include in this category rates which we ourselves have prescribed as maxima. Some such rates have already been reduced, but we fear that there is at times a reluctance on the part of traffic officers, because of possible contingent effects, to cut below these rates even when they believe that the result would be to railroad advantage. But in addition to reductions it is not at all unlikely that there are a considerable number of rates which can reasonably be advanced substantially, even under present conditions.

If tariffs are filed, in accordance with this suggestion, *proposing changes in rates upon particular* movements or kinds of traffic, we shall be guided, in determining whether they shall be suspended not only by the statements filed in support and protest, but also, in part, by our own general knowledge and the record in this proceeding as bearing on the particular kind of traffic in question. It should be noted that the protests which we are here considering do not go to every form of traffic. And to the extent that suspension proceedings are initiated, we shall expedite their disposition." (R. 97, 98.)

The Commission then selected a list of commodities, principally the products of agriculture, upon which no increases were allowed, and permitted the carriers at their option to apply on all other commodities increases ranging from $3.00 per car to 2¢ per hundred pounds. (R. 106-108.)

The Commission attached to its permission to add these surcharges to existing rates, two conditions, later modified, as follows, namely:

(a) That the carriers prepare and submit to the Commission for its approval, a plan for pooling the revenues resulting from such increases, and the distribution thereof, "in the first instance among the carriers who failed to earn

their interest charges, in proportion to their deficiencies," and,

(b). That "the increases herein proposed should be accepted as an entirety.* If, for competitive or other reasons, the carriers decrease any of the rates so increased, the amount of the decrease should be taken from the basic rates rather than from the ear-marked increases provided herein." (R. 100.)

The interested carriers thereafter filed with the Commission a supplemental petition for further consideration, and for certain changes in the previous opinion and finding of the Commission, and, after hearing argument on such petition but without the taking of further evidence, the Commission under date of December 5, 1931, issued its "Supplemental Report on Reconsideration." (179 I.C.C. 215, R. 109.)

The original report was modified "to the extent of relieving the carriers from the necessity of complying with the pooling plan therein described." (R. 113.) The Commission further amended its original report **"to the extent of relieving the carriers from the restriction contained in language hereinbefore quoted, which is as follows:**

> "* * * The increases herein proposed should be accepted as an entirety. If, for competitive or other reasons, the carriers decrease any of the rates so increased, the amount of the decrease should be taken from the basic rates rather than from the ear-marked increases provided herein. * * *" (R. 114.)

These modifications in the supplemental report resulted in two far-reaching changes in the original order, the second of which is most important in the present case

* Later changed so as to make application of surcharges optional.

for the reason that the carriers were under no obligation to apply the surcharges on interstate traffic as a whole, but were left free to elect in what cases and to what extent the interstate surcharges should be applied.

No order was issued by the Commission in either the original or the supplemental proceeding requiring the carriers to apply any of the increases allowed, but they were left free to apply only such increases as they desired to make and to reduce interstate rates where they were increased whenever they considered such action necessary or desirable in order to hold the traffic to their respective lines or increase their revenues. (When the Commission dealt with intrastate rates quite a different rule was applied, as we later show.)

There was no finding by the Commission that any of the interstate rates on the specific commodities, on which the surcharges were authorized, were just and reasonable; and the Commission did not prescribe the rate or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged.

In its original report in *Fifteen Per Cent Case, 1931, supra*, the Commission made no finding that the specific interstate rates, when and if increased by adding the surcharges, were just and reasonable. In its supplemental report no such finding was made; but the Commission says:

> "The freight articles selected by us in this connection were those for the transportation of which we believed the rates could be somewhat increased without causing the traffic to be transferred to other agencies of transportation and without bringing about an undue disturbance in business conditions or transgressing the bounds of maximum reasonable rates." (179 I.C.C. 216, R. 110.)

However, this general statement was without definite meaning or positive effect, because the carriers were relieved by any restriction against reducing or increasing existing rates, and they were under no compulsion to apply the interstate surcharges to existing rates or such rates as they might thereafter establish. The option thus given the carriers as to whether they would apply the interstate surcharges left the whole matter of interstate rates in confusion and doubt. No one could tell then, and no one can tell now, what ultimate rates were applicable on interstate traffic as a result of the general option given the carriers by the Commission to add or not to add the surcharges, or to reduce the interstate rates during the surcharge period. This period was to have expired on March 31, 1933, but was extended until September 30, 1933. (191 I.C.C. 361.)

The order under review was not so extended, and terminated on the issuance of a further order by the Commission dated August 25, 1933, which is reproduced as **Appendix "A"** to this brief, and again referred to later.

In its **third report,** (191 I.C.C. 361), the Commission points out that:

> "Economic conditions have grown progressively worse since the surcharge plan was authorized. The price level of practically all commodities has continued to fall. The abnormal relation of freight rates, as a whole, to the general level of commodity prices is, therefore, now much more pronounced. The carriers in many instances have found it impossible, due to the above-described conditions and the resulting increased competition with other agencies of transportation, to maintain the rates and surcharges as originally established. In some cases the surcharges were removed, and in others, although the surcharges as such were retained, the basic rates were reduced sufficiently so that when

the surcharges were added to them the total was equal to or less than the former basic rates. **In both cases the surcharges have, therefore, as a practical matter, disappeared.** The extent to which such reductions have occurred can not be accurately determined upon this record but it appears to have been considerable.

"The anticipation, when the surcharges were orignally authorized, that the number of railroads which would fail to earn their fixed charges would be greatly exceeded by those which did was not realized. Instead, 128 Class I carriers operating approximately 83 per cent of the total mileage did not earn fixed charges in 1932, without the surcharges. This condition resulted from the unprecedented decline in railroad freight traffic since 1931. The revenue turned over to the Railroad Credit Corporation fell far short of expectations based upon 1931 traffic, and that institution, although helpful, turned out to be a minor and the Reconstruction Finance Corporation the major prop to railroad finances.

"It is evident that the surcharge plan, as a temporary emergency measure, although productive of some net increase in revenue, falls far short of solving the problem of credit now confronting the railroads generally. **Continuance of the surcharges without limitation or condition would be equivalent to a general increase in freight rates. This clearly is not justified upon the present record.** The problems with which the railroads are confronted today can not be solved by general increases in freight rates. Certainly any substantial increase would result in permanent injury to the railroads. Their low earnings are not the result of low rates. The present relation between commodity prices and freight rates was discussed upon the record to some extent, but that general question will be presented in another proceeding at an early date and can not be determined here. In our original report

herein, under the heading of 'The Railroad Future,' we discussed certain matters of utmost importance to the future of the railroads. We wish to again emphasize the recommendations which we there made." (191 I.C.C. 361.) (Our emphasis.)

The above case, being a sequel to *Fifteen Per Cent Case, 1931,* was submitted to the Commission February 17, 1933, and decided March 7, 1933, on evidence taken prior thereto. Consequently any prediction by the carriers of loss of intrastate revenues based on 1931 movement of traffic had become "an iridescent dream" before the original surcharge period had expired.

In each of the reports of the Commission in *Fifteen Per Cent Case, 1931, supra,* there were strong dissenting opinions. In the original case, 178 I.C.C. 539, 586, Commissioner Tate concurred "in those portions of the report and order which dismiss the petition of the carriers for a fifteen percent increase in freight rates and which discuss the desirability of attention on the part of the carriers to economies and to competition with other means of transportation and the probable desirability for seeking some character of legislative relief; and further in the portions discussing a plan to be worked out so that application of any increase be so applied that interest on bonds of all railroads, weak or strong, be paid, at least *pro tanto;*" but he dissents **"from those portions increasing any rates in any respect or in any amount in this proceeding."** An appropriate order was entered denying the application. (R. 106.)

In the second report, 179 I.C.C. 215, Commissioner Lee, concurring specially says:

"It is evident, however, that there is such opposition to our plan that the carriers will not be

able to put it into effect. In this situation some of my brethren adhere to our original report. There is much in reason to support their position. On the other hand, the majority allows the increased rates to be established without the imposition of any condition. After we found that no increase had been justified and permitted the establishment of slight increases only on the express condition that the earnings produced thereby would be used, to the extent necessary, to meet interest requirements and protect railroad credit, the majority now allows the increases without any condition or restrictive requirement whatever. As between these extremes, it is my position that, in view of the conditions in which the railroads find themselves, we should grant their application to the extent of permitting them to make the increases specified on condition that they loan to the needy carriers such portion of the fund resulting therefrom as may be necessary to meet interest charges. It seems to me, however, that such loans should be made at a nominal rate of interest and without security." (R. 115.)

Commissioner Eastman, dissenting, points out that the Commission "made no finding that the rates resulting from the increases proposed would be just and necessary. No such finding was necessary." (179 I.C.C. 223, R. 117.) He discusses at length the organization of the Railroad Credit Corporation, the evils experienced in the past arising out of pooling arrangements, and the legal obstructions in the way of the proposed loaning plans. Commissioner Eastman's dissent was joined in by Commissioners McManamy, Porter, and MaHaffie. (179 I.C.C. 236, R. 130.)

The dissents of four commissioners to the report and order in No. 25,135, Increases in Intrastate Rates and Charges, supra, are again referred to later.

PROCEEDINGS BEFORE THE LOUISIANA PUBLIC SERVICE COMMISSION FOLLOWING THE FIFTEEN PER CENT CASE, 1931.

After the Commission had issued its original and first supplemental reports in the *Fifteen Per Cent Case, 1931, supra,* various carriers operating in the State of Louisiana and in western territory applied to the Louisiana Public Service Commission for authority to apply on Louisiana intrastate traffic surcharges similar to those allowed by the Interstate Commerce Commission on interstate traffic, excepting the carload commodities on which the Interstate Commerce Commission allowed no increase. (R. 208-214.)

The Louisiana commission conducted an exhaustive hearing, and thereafter, on February 8, 1932, entered its order No. 897, and on March 3, 1932, its amendatory order No. 901, allowing the same surcharges to be applied on intrastate freight rates for similar traffic, except that, for reasons stated, it exempted from the surcharges a list of commodities consisting principally of the products of agriculture and roadbuilding material. It was provided in the order of the Louisiana Commission "that the emergency rate increases herein authorized, shall expire March 1, 1933, (later corrected to March 31, 1933), unless by subsequent order of this Commission the said expiration date is changed or modified."* (R. 135-143.)

The following parallel columns show the commodities excepted by the Interstate Commerce Commission from the interstate surcharges, and the additional commodities excepted by the Louisiana Commission from the intrastate surcharges:

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* The Louisiana Commission extended its Order No. 897 until September 30, 1933.

COMMODITIES EXCEPTED FROM INTERSTATE SURCHARGES BY INTERSTATE COMMERCE COMMISSION (R. 130).

Wheat
Corn
Oats
Barley and rye
Rice
Grain, n.o.s.
Flour, wheat
Meal, corn
Flour and meal, edible, n.o.s., except cassava flour, sago flour, and tapioca flour
Mill products, n.o.s., except alfalfa meal
Hay and alfalfa
Straw
Cotton in bales, any quantity
Cotton linters, noils, and regins
Cottonseed
Apples, fresh
Berries, fresh
Grapes, fresh
Peaches, fresh
Fruits, fresh, domestic, n.o.s.
Potatoes, other than sweet
Beans and peas, dried
Flaxseed
Sugar beets
Products of agriculture, n.

ADDITIONAL COMMODITIES EXCEPTED FROM INTRASTATE SURCHARGES BY LOUISIANA COMMISSION (R. 141).

Sand, gravel, shells, crushed stone and similar road-building material
Salt cake
Fertilizer and fertilizer material
Cottonseed cake, meal, brand, hulls and meats
Bagasse**
Pulpwood
Stave bolts
Sugar-cane**
Sugar, raw*
Sugar, refined
Sweet potatoes
Fresh vegetables
Pulverized limestone
Waste wood
Second hand sugar bags
Waste paper
Soya beans, velvet beans, Austrian winter peas, and cow peas
Rosin sizing
Potash nitrate
Sirup and molasses
Blackstrap molasses
Crude fire clay
Clay, n.o.i.b.n.
Charcoal
Stave bolts

o.s., as follows: corn cobs, corn cob meal; corn husks or shucks; corn stalks; flaxseed hulls	Less than carload rates.
Horses, mules, ponies and asses	
Cattle and calves, single deck	
Sheep and goats, double deck	
Calves, double deck	
Sheep and goats, single deck	
Hogs, single deck	
Hogs, double deck	
Logs	
Wood	
Ties, railroad	
Excelsior (wood), wood shavings, n.o.i.b.n., and sawdust	
Cotton waste, other than manufactured packing or wiping waste	
Sugar-cane*	

The report and order of the Louisiana commission deals specifically with each commodity excepted from the surcharges (R. 137-141), and in general states:

> "Some of the most important agricultural commodities produced in Louisiana are not in the exempt list as to interstate traffic. Because we were

* Not exempted in original recommendations but by subsequent report carriers were authorized to exclude sugar-cane from interstate surcharges because sugar beets had been excluded.

** On petition of New Orleans Joint Traffic Bureau, the case was reopened as to raw sugar and bagasse, but not disposed of pending the injunction issued in this case.

and are without the necessary funds, the Louisiana Public Service Commission was not represented at the hearings before the Interstate Commerce Commission held in Washington and elsewhere and the Louisiana agricultural interests therefore did not receive the same favorable consideration extended to the major farm products of the other states represented at these I. C. C. hearings.

"The order of the Interstate Commerce Commission did not set forth in any detail any reasons found in the testimony by which the exclusion of certain commodities and the inclusion of other commodities in the rate increases could be justified, practically the only evidence before that Commission being statements as to the financial condition of the rail carriers of the country, showing a general, and in some instances startling, decline in revenues.

"The application of the Louisiana carriers was heard at New Orleans on January 26th, 1932. It was admitted by all persons present at the hearing that the rail lines were in need of emergency rate increase relief, and we are of the opinion that it will be beneficial to the public generally for some measure of relief to be granted the rail lines as to their Louisiana rates.

"Practically every state in the United States has granted or will grant such emergency revenue assistance to the railroads. Among the anticipated favorable results of such revenue increase will be not only a stopping of the further discharge of railroad employees in Louisiana and throughout the United States, but according to the uncontroverted statements made by the carrier representatives, the increase in revenues expected as a result of these proceedings will permit the railroads to re-employ many of their former employees whose services the carriers have been compelled to dispense with because of the financial difficulties faced by them during this period of unprecedented depression.

"This Commission does not feel however, that the principal industries of this state should be expected to contribute increased freight rates to the financially crippled carriers on every commodity they use and produce. We believe that the burden of cooperating towards the financial rehabilitation of the railroads should be as evenly distributed as possible and that the share which the Louisiana industries should be called upon to bear should be equal and uniform among those able to help.

"A study of the rail movement in Louisiana products in interstate commerce was made by this Commission and it was ascertained that most of the commodities produced in Louisiana in great volume were already contributing towards the relief of the railroads by paying the interstate increased emergency rates allowed by the Interstate Commerce Commission in Ex Parte 103 on January 4th, 1932.

"So, in determining whether or not this Commission should grant increases applied for on Louisiana state traffic consideration was given by this Commission to such interstate traffic contributions already being made on such commodities which move so much more extensively in interstate than in intrastate commerce." (R. 135, 136.)

PROCEEDINGS BEFORE THE INTERSTATE COMMERCE COMMISSION IN No. 25135, INCREASES IN INTRASTATE FREIGHT RATES, PART 5, LOUISIANA.

The carriers operating in Louisiana published the surcharges on Louisiana intrastate freight rates as allowed by the Louisiana commission, and as to the excepted commodities, filed with the Interstate Commerce Commission, in connection with the carriers operating in the western States, a general petition asking the Commission to insti-

tute an investigation under Section 13 (3) and (4) of the Interstate Commerce Act, (*U. S. Code, title* 49 *Sec.* 13, 41 *Stat. at L.* 484), with respect to alleged unjust prejudice and advantage over intrastate shippers and localities, and unjust and unreasonable prejudice and disadvantage against interstate shippers and localities and undue burden on interstate commerce, by reason of the refusal of the Louisiana commission, the rate-regulating body of the State of Louisiana, to permit increases allowed by the Interstate Commerce Commission in *Fifteen Per Cent Case, 1931, supra,* to apply on the additional commodities exempted from the surcharges by the Louisiana commission.

This proceeding became *"No. 25,135, Increases in Intrastate Freight Rates and Charges, Part 5—Louisiana,"* on the docket of the Commission. After notice to the proper authorities of the State of Louisiana, the proceeding was set for hearing at New Orleans, Louisiana, on May 6 and 7, 1932, and for further hearing at Washington, D. C., on May 24, 1932. The case was argued before the entire Commission on May 29 and 30, 1932, and submitted.

On September 29, 1932, the Commission rendered its decision in the above case, which included similar controversies in Arkansas, Idaho, Kentucky, Montana, Nebraska, Oklahoma, Texas, Utah and Arizona. (186 I.C.C. 615, R. 11-62.)

The portion of the report dealing with Louisiana intrastate rates will be found on pages 35-38 of the record. (186 I.C.C. 640, 643.) The report of the Commission was not accompanied by an order fixing intrastate rates within the State of Louisiana, but contained the following admonition:

> "An order will be entered discontinuing Part 1 —Arizona. Orders will also be entered in accordance with the foregoing findings, except where

> State commissions directly involved notify us on or before November 1, 1932, that they will promptly permit the increases herein required. If an order is necessary in any part, it will be issued on or immediately after the above date and require the establishment of the increased rates on short notice." (Tr. 57, 186 I.C.C. 664.)

The Louisiana Public Service Commission failed to accept the suggestion of the Commission, and so notified the Commission. Accordingly, on the 7th day of November, 1932, an order was entered by the Commission prescribing intrastate rates within the State of Louisiana on the commodities which were excepted by the Louisiana Commission on the basis of **"rates which shall not be lower than the rates now in force and applicable to the intrastate transportation of said traffic within the State of Louisiana, plus the surcharges authorized by the findings in *Fifteen Per Cent Case, 1931, supra,* 178 I.C.C. 539, and 179 I.C.C. 215, on corresponding interstate traffic, so long as such surcharges are maintained on such traffic in accordance with such findings."*** (R. 2, 3.) (Ante, pp. 2, 3.)

The said order was to have become effective on December 16, 1932, and was "to remain in force until further order of the Commission." (R. 2, 3.) Prior to the effective date of the order, the suit of the State of Louisiana and others against the United States (2 F. Sup. 545) was filed.

The report and supplemental report in *Fifteen Per Cent Case, 1931,* the record before the Commission in *Docket No. 25,135, Increases in Intrastate Freight Rates and Charges, Part 5, Louisiana,* and the report and orders of the Louisiana commission were filed in evidence in the District Court, the testimony has been reduced to narra-

* The rates prescribed on intrastate traffic bore no relation to interstate rates.

tive form, and, together with the exhibits filed in connection therewith, are included in the record. (R. 158, 272.)

SUMMARY OF ARGUMENT.

1. The proceedings before the Interstate Commerce Commission in *Fifteen Per Cent Case, 1931,* were general in form, taking on the nature of a preliminary administrative inquiry as to whether certain proposed schedules if filed under section 6 of the Interstate Commerce Act, as amended by the Transportation Act, 1920, should be suspended. In a proceeding of such a character, the reasonableness of interstate rates involved could not be determined. The Commission in said case made it clear that it was not determining the question of reasonableness under section 1 of the Act, and no finding that the rates resulting from the addition of the approved surcharges were just and reasonable was made.

2. No finding is made in the report of the Interstate Commerce Commission of September 29th, 1932, in its *Docket No. 25,135, Increases in Intrastate Freight Rates,* that the interstate rates as increased by the surcharges on the articles on which the Louisiana Commission refused to allow similar surcharges to be applied on intrastate rates within the State of Louisiana, are just and reasonable, and without such finding the Commission has not laid the necessary predicate for an interference with intrastate freight rates and charges not shown to be unjust or unreasonable.

3. The Interstate Commerce Commission did not allow a general increase in all interstate rates, but selected a list of commodities which it exempted from the interstate surcharges, and allowed the advances to go into effect on other commodities, including those exempted by the Lou-

isiana commission from intrastate surcharges (except sugar-cane which it exempts), without a finding that the particular rates so increased were just and reasonable, which finding is essential before the Commission can disturb intrastate rate in order to remove an alleged undue preference of intrastate shippers or localities and an undue prejudice to interstate commerce.

4. The determination of the reasonableness of the interstate rates on the articles exempted by the Louisiana commission is a prerequisite to a finding of prejudice arising out of the relationship of interstate and intrastate rates, as they exist under the order of the Louisiana commission, and as such a finding is missing in the Commission's reports in the cases under review, jurisdiction is lacking in the Commission to strike down the law of the State of Louisiana.

5. The permission granted by the Commission in its reports and decisions in the *Fifteen Per Cent Case, 1931, supra,* to increase interstate rates by the amount of the surcharges therein specified, including the rates on the articles exempted by the Louisiana commission, expired by limitation on March 31st, 1933, but were extended by subsequent authority granted in 191 I.C.C. 361 to expire September 30, 1933, while the Commission did not so extend its order in *No. 25,135, Part 5, Louisiana Intrastate Surcharges.* No findings could therefore be made by the Commission as to the revenue outcome of the failure to apply intrastate surcharges after March 31, 1933.

6. The mere approval of advances in interstate rates on certain commodities by the addition of a surcharge is not the fixing of just and reasonable interstate rates either in themselves or with respect to other rates, and affords no basis upon which the Interstate Commerce Commission

can exercise its authority under section 13 (4) of the act, to regulate intrastate rates under any circumstances.

7. The Commission in disposing of the *Fifteen Per Cent Case, 1931, supra,* did not apply any general rule as to the application of the surcharges to all freight rates and charges, but, on the contrary, it selected certain commodities on which it allowed the interstate surcharges to be applied without suspension, and as to these allowed varying amounts to be added, while as to others it allowed no surcharges, thus taking off of the carriers the burden of justifying the increase in rates, which is the general rule of the Commission.

8. The action of the Louisiana commission in exempting from the intrastate surcharges the commodities under consideration is in harmony with the action of the Interstate Commerce Commission in canvassing the traffic and determining after consideration of a comprehensive record, what articles moving in intrastate traffic could bear temporary increases in freight rates, and as to what articles so moving, an increase in intrastate freight rates would divert traffic away from the railroads to other modes of transportation and thus cause the revenue of the rail carriers to diminish, or require prompt departure from the rates so increased in order to hold the traffic to the rails or regain that which was lost. Thus the Louisiana commission, in the rendition of its order which the Interstate Commerce Commission now seeks to set aside, exercised a discretion with which the Interstate Commerce Commission cannot lawfully interfere.

9. The Interstate Commerce Commission failed to issue an order in the *Fifteen Per Cent Case, 1931, supra,* prescribing reasonable surcharges or fixing and prescribing reasonable maximum interstate rates; but merely ap-

proved certain surcharges to be added to the applicable interstate rates on some commodities and refused to allow surcharges to be added to other interstate rates, leaving it optional with the railroads to comply or not comply with the authority granted by the Commission to apply the approved surcharges on interstate traffic. There is, therefore, a lack of definite findings and specific requirements by order of the Commission which are essential to action by the Commission in disturbing intrastate freight rates.

10. There is no finding by the Commission in either the *Fifteen Per Cent Case, 1931, supra,* or in *Docket No. 25,135, Increases in Intrastate Freight Rates and Charges, supra,* that any of the rates on any of the commodities to which the Commission now seeks to apply surcharges on Louisiana intrastate traffic, are maximum reasonable rates. (186 I.C.C. 619.)

11. There is no finding by the Commission as to the revenue which the railroads operating in the State of Louisiana will receive from the application of the proposed surcharges on Louisiana intrastate traffic during the remainder of the period in which the surcharges on interstate traffic will be applied, which expires March 31st, 1933, and no evidence upon which such a finding could be made.

12. There is no finding or reference to evidence concerning less-than-carload traffic within the State of Louisiana, or whether the failure of the Louisiana commission to allow the interstate surcharges to be added to the intrastate rates applying on such traffic causes or will cause any undue preference of intrastate shippers and localities, or undue prejudice to interstate shippers or localities, or unjust discrimination against interstate commerce. (R. 7, 8, 9.)

ARGUMENT.

(1)

The Interstate Commerce Commission is without power to prescribe intrastate rates within the State of Louisiana where no finding is made that interstate rates to whose level the intrastate rates are raised, are just and reasonable.

The power and authority of the Interstate Commerce Commission to directly prescribe intrastate rates in order to remove undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand, and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, was first invested in the Commission by amendments which were made to the Interstate Commerce Act by the Transportation Act, 1920. (*U. S. Code, title* 49, *section* 13, 41 *Stat. at L.* 484.)

The power of the Commission with respect to intrastate rates, is set forth in Section 13 (4) of the Act, as follows:

> **"Whenever in any such investigation the Commission, after full hearing, finds that** any such **rate, fare, charge, classification,** regulation, or **practice causes any undue or unreasonable** advantage, **preference, or prejudice as between persons or localities in intrastate commerce** on the one **hand and interstate or foreign commerce** on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, **it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum,** thereafter to be charged, and the

classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

Primarily, the power of the Interstate Commerce Commission is confined to the making of just, reasonable and non-discriminatory interstate rates. In this field the jurisdiction of the Interstate Commerce Commission is exclusive. Its power to fix and regulate State rates, however, is not a direct or primary power, but it is only incidental to its power to fix just and reasonable interstate rates. The procedure to be followed by the Commission in fixing just and reasonable interstate rates, is set out in Section 15 (1) of the Interstate Commerce Act, as amended by the Transportation Act, 1920. (*U. S. Code, title* 49, *sec.* 15 (3).) This section of the Act requires:

"That whenever, after full hearing, upon a complaint made as provided in section 13 of this Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this Act for the transportation of persons or property or for the transmission of messages as defined in the first section of this Act, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this Act, is or

will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation or transmission other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed."

Section 15a, which was added to *Interstate Commerce Act by Transportation Act, 1920*, did not efface the requirements of Section 13 (4) or Section 15 (1), both of which sections were amended by *Transportation Act, 1920*, but with due regard for their requirements, provides that:

"(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reason-

able expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: *provided*, that the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country."

The similarity of the requirements of Section 15 (1) and those of Section 13 (4) indicate the intent of Congress to delegate to the Commission the power to remove discrimination against interstate shippers, localities or commerce growing out of interstate rates or charges, or growing out of intrastate rates or charges by following a specified procedure. In Section 15 (1), the Commission is authorized and empowered, and in Section 13 (4) is required, to prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged or observed.

In every case where the Federal commission undertakes to exercise control over intrastate rates, the first jurisdictional questions which arise are, (1), whether its interference is based upon a substantial compliance with the Act, and, (2), whether its action in changing State rates is supported by findings sufficient to warrant it in exercising its jurisdiction over State rates.

The Supreme Court has zealously guarded the dual functions of the State and Federal governments, and has repeatedly declared that before the Federal commission can invade the State domain it must comply in every re-

spect with the provisions of the Act giving it power to interfere with intrastate rates.

In *Florida v. United States*, 282 U. S. 194, 75 L. Ed. 291, the Supreme Court says:

> "The propriety of the exertion of the authority must be tested by its relation to the purpose of the grant and with suitable regard to the principle that whenever the Federal power is exerted within what would otherwise be the domain of state power, the justification of the exercise of the federal power must clearly appear. *Illinois C. R. Co. v. State Pub. Utilities Commission*, 245 U. S. 493, 62 L. Ed. 425, P.U.R. 1918C, 279, 38 S. Ct. 170, *supra*. The Commission has no general authority to regulate intrastate rates and the mere existence of a disparity between particular rates on intrastate and interstate traffic does not warrant the Commission in prescribing intrastate rates. *Arkansas R. Commission v. Chicago, R. I. & P. R. Co.*, 274 U. S. 597, 71 L. Ed. 1224, 47 S. Ct. 724, *supra*."

The statement from the *Florida Log* case, *supra*, that **"the justification of the exercise of the Federal power must clearly appear,"** was in response to a serious argument that it was the duty of the Court to determine *de novo* and wholly independent of any determination by the Interstate Commerce Commission, the jurisdictional facts which would bring into existence Federal power over intrastate rates. In the *Florida Log* case, however, it was not necessary for the court to determine this question because there it held that the Federal commission had not made the necessary findings to support its order; and that in the absence of such findings the court would set aside the order without examining the evidence to determine the existence of the facts. The same situation exists in the present case, that is to say, the Commission did not make

the essential findings and therefore it is not necessary for the court to examine the evidence or pursue the question as to the character of determination which the courts must make as to the existence of jurisdictional facts justifying the invasion of State power.

It is pertinent to suggest, however, that in the recent case of *Crowell v. Benson*, 285 U. S. 22, 76 L. Ed. 598, the Supreme Court for the first time announced the rule as to the character of review which the courts must give as to the findings of **jurisdictional facts** made by administrative tribunals where such findings involve constitutional rights, and held that the court must make an independent determination of such facts in a trial *de novo*.

(2)

Section 15a Confers no Power on the Commission to Deal With Intrastate Rates. What Is Done Under That Section Must be Done in the Exercise of Its Powers to Prescribe Just and Reasonable Rates Under Those Sections of the Act Authorizing It to Prescribe Such Rates.

The Interstate Commerce Commission is authorized to prescribe intrastate rates in only two classes of cases, namely:

(1) Where it becomes necessary to change intrastate rates to remove preferences and discriminations against persons and localities in interstate commerce. This power was first recognized as existing under Section 3 of the Act to regulate commerce, prior to its amendment by the Transportation Act, 1920, in the *Shreveport* case, 234 U. S. 342, 58 L. Ed. 41, and has been exercised by the Commission many times since that epoch-making case was de-

cided. This power was not exercised in the present case. (R. 627.)

(2) Where it becomes necessary to remove an undue burden on interstate commerce due to the intrastate, as compared with the interstate rates. The present case is confined to the matter of unjust discrimination against interstate commerce, without a finding in regard to the revenue outcome of the increases in intrastate rates due to the surcharge, (R. 627) and without evidence on which such finding could be made.

However, before the Commission has attempted to change intrastate rates in order to remove discrimination against interstate commerce growing out of the relationship of intrastate and interstate rates, it has first established just and reasonable interstate rates, and thereafter related the intrastate rates to the interstate rates thus prescribed. Thus, in *Houston, East and West Texas R. R. Co. v. United States,* (*Shreveport* case, *supra*), the Commission, by specific order required the defendant carriers to put in force and maintain for a period of two years class rates found by the Commission to be reasonable, and further required the carriers to cease and desist from exacting higher rates for the transportation of any article from Shreveport, Louisiana, to Dallas, Texas, and points on its lines intermediate thereto, than were contemporaneously exacted for the transportation of such articles from Dallas, Texas, towards Shreveport, La., for an equal distance. The Court says:

> "It is also clear that, in removing unjust discriminations against interstate traffic arising from the relation of intrastate to interstate rates, Congress is not bound to reduce the latter below what it may deem to be a proper standard fare to the carrier and to the public. Otherwise, it could pre-

> event the injury to interstate commerce only by the sacrifice of its judgment as to the interstate rates. Congress is entitled to maintain its own standard as to these rates and to forbid any discriminatory action by interstate carriers which will obstruct the freedom of movement of interstate traffic over their lines in accordance with the terms which it establishes."

In this first case dealing with the power of the Interstate Commerce Commission to remove discrimination against persons, places, commodities, or particular descriptions of traffic produced by the relation of intrastate to interstate rates, the court recognized the necessity for the Commission to prescribe just and reasonable interstate rates, and to require the intrastate rates to be fixed at the same level.

In *Illinois C. R. Co. v. Public Utilities Com.*, 245 U. S. 493, 62 L. Ed. 425, the Supreme Court holds that Congress has power to prevent the common instrumentalities of both interstate and intrastate commerce from being used in their intrastate operations in such manner as affecting injuriously traffic which is interstate. The order of the Commission, however, was set aside for its uncertainty. In discussing the manner in which the Interstate Commerce Commission should proceed in removing unjust discrimination arising out of a disparity in intrastate and interstate rates, the court, referring to *The Shreveport* case, *supra*, says that it was there held that:

> "In correcting such discrimination Congress is not restricted to an adjustment or reduction of the interstate rates, but **may prescribe a reasonable standard to which they shall conform and require the carrier to adjust the intrastate rates in such way as to remove the discrimination;** for where the interstate and intrastate transactions of carriers are so related that the effective regulation of one in-

volves control of the other, it is Congress, and not the State, that is entitled to prescribe the dominant rule.' (Our emphasis.)

In *Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy Railroad Company*, 357 U. S. 563, 66 L. Ed. 371, the first case which was decided after Section 13 was amended by the Transportation Act, 1920, so as to give the Commission direct jurisdiction over intrastate rates in cases where such rates, upon investigation, were found to create unjust discrimination against interstate or foreign commerce, the court reviewed the report and order of the Interstate Commerce Commission in *Wisconsin Passenger Fares*, 59 I.C.C. 391.

The court refused to uphold the report of the Commission on the ground that it showed discrimination against persons and localities at all interior points, but upheld the order on the ground that the Interstate Commerce Commission was authorized to remove unjust discrimination against interstate commerce caused by a disparity in intrastate and interstate rates. Speaking of the powers of the Commission under Section 13 (3) and (4), and Section 15a, the Court says:

> "It is manifest from this very condensed recital that the act made a new departure. Theretofore the control which Congress through the Interstate Commerce Commission, exercised, was primarily for the purpose of preventing injustice by unreasonable or discriminatory rates against persons and localities, and the only provisions of the law that inured to the benefit of the carriers were the requirement that the rates should be reasonable in the sense of furnishing an adequate compensation for the particular service rendered and the abolition of rebates. **The new measure imposed an affirma-**

tive duty on the Interstate Commerce Commission to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States. This is expressly declared in section 15a to be one of the purposes of the bill.

"* * * **Section 15a confers no power on the commission to deal with intrastate rates. What is done under that section is to be done by the Commission 'in the exercise of its powers to prescribe just and reasonable rates,' i. e., powers derived from previous amendments to the Interstate Commerce Act, which have never been construed or used to embrace the prescribing of intrastate rates.** When we turn to paragraph 4, section 13, however, and find the Commission for the first time vested with a direct power to remove 'any undue, unreasonable, or unjust discrimination against interstate or foreign commerce,' it is impossible to escape the dovetail relation between that provision and the purpose of section 15a. If that purpose is interfered with by a disparity of intrastate rates, the Commission is authorized to end the disparity by directly removing it, because it is plainly an 'undue, unreasonable, and unjust discrimination against interstate or foreign commerce,' within the ordinary meaning of those words."

In *State of New York, etc., v. United States, et al.*, 257 U. S. 571, 66 L. Ed. 385, the Supreme Court followed the decision in *The Wisconsin* case, *supra*, pointing out that the refusal of the Public Service Commission of the State of New York, to increase the passenger fares to the level of the passenger fares as prescribed by the Interstate Commerce Commission in *Ex Parte* 74, *Increased Rates*, 1930 (58 I.C.C. 220).

Both the Wisconsin case and the New York case were passenger fare cases and were decided upon the theory

that the entire interstate fabric of passenger fares could be defeated by breaking up interstate journeys into intrastate journeys. In both of these cases, the Commission made findings as to both the interstate and intrastate revenues of the carriers and fixed just and reasonable interstate rates to which level they required the intrastate rates to be increased. The period during which the orders fixing the increased interstate fares was to run was unlimited, and it was easy to forecast the result of the failure of the carriers to apply the same fares as were found to be reasonable for interstate journeys.

In the case at bar, however, there is no evidence showing the revenue from the interstate traffic in any of the commodities excepted by the Louisiana commission, and the commission did not prescribe just and reasonable interstate rates to whose level the intrastate rates involved were required to be increased. In fact, the Commission had left the carriers free to apply or not to apply the interstate surcharges, and to reduce or increase the interstate rates. When it dealt with the Louisiana intrastate rates, however, it prescribed intrastate "rates which shall not be lower than the rates now in force and applicable to the intrastate transportation of said traffic within the State of Louisiana, plus the surcharges ,authorized by the findings in *Fifteen Per Cent Case, 1931*, 178 I.C.C. 539, and 179 I.C.C. 215, on intrastate traffic so long as such surcharges are maintained on such traffic in accordance with said findings." Thus we have a case where the Commission, failing to fix interstate rates, fixes intrastate rates, and requires a level of intrastate rates to be maintained which have no relation to interstate rates.

The peculiar situation which resulted from this unwarranted action of the Commission was that while the

interstate rates plus the surcharges, were subject to constant fluctuation, the intrastate rates within the State of Louisiana were "frozen," and taken out of the power of regulation by the Louisiana Public Service Commission. There was no interstate level of rates to which the intrastate rates could be raised; there was no previous finding by the Commission that the interstate rates on the commodities excepted by the Louisiana commission, as increased by the surcharges, were just and reasonable; there was no finding by the Commission that the specific rates on any of the said commodities which would result from the application of the interstate surcharges to the interstate rates were just and reasonable. The flexibility of the authority of the Interstate Commerce Commission in *Fifteen Per Cent Case, 1931*, as to interstate rates, and the inflexibility of its order in *No. 25,135, Increases in Intrastate Freight Rates and Charges, Part 5, Louisiana*, left a chaotic uncertain condition as to the interstate freight rates and revenues, which could not be reduced, by a comparison of 1931 revenues to a definite, or even reasonably, accurate result for the 3½ months in which the Louisiana surcharge order remained in effect.

These facts are quite different from those present in the *Wisconsin* case and the *New York* case, *supra*, upon which the United States and the Commission place so much emphasis, for in both of those cases, which dealt only with passenger fares, the Commission's order fixed the interstate fares at 3.6 cents per mile and afterwards required the intrastate fares in those States to be increased to 3.6 cents per mile. As no comparisons are made in the present case of interstate and intrastate rates on the commodities excepted by the Louisiana commission from the surcharges, it is plain that the jurisdictional facts present in the *Wisconsin* and *New York* cases were not developed in

the present case, and therefore these cases, which have not been followed by the Commission in the present case, do not support the order in controversy.

(3)

THE COMMISSION IS A STATUTORY BODY EXISTING ONLY BY THE WILL OF CONGRESS AND EXERCISING ONLY SUCH POWERS AS HAVE BEEN EXPRESSLY DELEGATED TO IT. IT CANNOT GO BEYOND THESE POWERS AND IS HELD TO A STRICT COMPLIANCE WITH THE STATUTE IN MATTERS OF JURISDICTION AND PROCEDURE.

As the Interstate Commerce Commission is a creature of Congress, having specially delegated powers, it can exercise no other powers and must exercise the powers which have been delegated in the manner prescribed.

In the case of *Arizona Grocery Co. v. Atchison, T. & S. F. R. Co.*, 284 U. S. 370, 387, 76 L. Ed. 348, 354, the Court says:

> "But it is suggested that the mere setting of limits by Commission order leaves the carrier free to name any rate within those limits, and, as at common law, it must at its peril publish a reasonable rate within the boundaries set by the order; that as it has the initiative it must take the burden, notwithstanding the Commission's order, of maintaining the rate at a reasonable level, and will be answerable in damages if it fails so to do. **This argument overlooks the fact that in declaring a maximum rate the Commission is exercising a delegated power legislative in character, that it may act only within the scope of the delegation; that its authority is to fix a maximum or minimum reasonable rate; for it is precluded by the statute from**

> **fixing one which is unreasonable, which by the statute is declared unlawful. If it were avowedly to attempt to set an unreasonably high maximum its order would be a nullity."** (Our emphasis.)

The procedure which the Commission must follow in exercising the powers delegated to it by Section 13 (3), (4), is set out specifically. We can find no better definition of this procedure than has been given by the courts.

In *Georgia Public Service Commission v. United States, et al.*, 39 Fed. (2d) 167, 169, 170, and 42 Fed. (2d) 467, (affirmed by the Supreme Court, 283 U. S. 767, 75 L. Ed. 1397), the District Court, through Judge Sibley, in refusing an interlocutory injunction, discusses the Commission's powers under Section 13 (3) and (4), to remove discrimination against interstate commerce by prescribing State rates, and says:

> "The delegation to the Interstate Commerce Commission of **power to prescribe an intrastate rate is found in section 13,** subsection 4, of the amended Commerce Act [49 USCA section 13 (4)]. The power reaches to the general revision of generally discriminatory state scales, *Wisconsin R. R. Commission v. C. B. & Q. R. R.*, 257 U. S. 563, 42 S. Ct. 232, 66 L. Ed. 371, 22 A. L. R. 1086, and to dealing with particular rates, commodities and practices, *Florida v. United States* (D. C.) 30 F. (2nd) 116. But in every exercise of this interference with state functions the procedure required by subsection 4 must be followed. The first named requisite of the hearing required is that there be a 'full hearing.' If discrimination in state rates be found substantial enough to require removal, the question must then always arise whether the state rate or the interstate rate is unreasonable and should be altered. A previous establishment of the interstate rate as reasonable will not settle the question, because the rep-

resentatives of the state are entitled to a full hearing on this question of relative reasonableness."

* * * * * * * * * *

"The second question depends upon the language of the order. Section 13 (4) provides that the Interstate Commerce Commission, on finding discrimination by state rates, 'shall prescribe the rate, fare ,or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged.' The language is mandatory. One of four things must be done: First, make a fixed rate; second, make a maximum; third, make a minimum; fourth, fix both a maximum and a minimum. The order of Dec. 9, 1929, undertakes the last." [39 F. (2nd) 169.]

The *Georgia* case was reviewed and affirmed by the Supreme Court, (*Georgia Public Service Commission v. United States, et al.*, 283 U. S. 767, 75 L. Ed. 1397), and, in delivering the opinion, Mr. Justice Brandeis says:

"Appellants contend that the order of the Interstate Commerce Commission is void, because it was entered without the full hearing prescribed by Section 13 (4). The argument is this. Paragraph 4 prescribes that 'whenever * * * the Commission, after full hearing, finds' a state rate to be unlawful because it causes undue prejudice or unjust discrimination, 'it shall prescribe the rate, fare or charge, or the maximum or minimum, or maximum or minimum, thereafter to be charged.' Act of February 28, 1920, chap. 91, Section 416, 41 Stat. at L. 456, 484 U.S.C. title 49, Section 13, amending Act of February 4, 1887, chap. 104, Section 13, 24 Stat. at L. 379, 383. The claim is that there was no 'full hearing' before entry of the challenged order, because the Commission limited the supplemental hearing to the question of prejudice and discrimination, and refused to consider anew the question of the reasonableness of the interstate scales. It is

> **true that when state rates are assailed on the ground that they result in undue prejudice to interstate shippers or discriminate against interstate commerce, the Commission must determine whether the existing interstate rates are reasonable, as it may not require intrastate rates to be raised above a reasonable level.** *Virginia Corp. Commission v. Aberdeen & R. R. Co.*, 136 Inters. Com. Rep. 173, 180."

The Government and the Commission in their brief contend that the *Georgia* case was not a "general revenue" case, and cites the Commission's report in which it is argued that "the *Georgia* case did not emanate from a general-revenue case and dealt chiefly with 'undue prejudice and discrimination to interstate shippers and localities,' as is made clear by the comments on page 773 of the Court's opinion." The Court, however, made no distiction between the undue prejudice that results to interstate shippers or discrimination against interstate commerce, but clearly indicated that it is the duty of the Commission in either case to "determine whether the existing interstate rates are reasonable," before the intrastate rates alleged to cause the discrimination can be disturbed by the Commission.

In *Brimstone R. & Canal Co. v. United States*, 276 U. S. 104, 72 L. Ed. 487, the Supreme Court set aside an order of the Interstate Commerce Commission fixing divisions for the Brimstone on the grounds that:

> "The record discloses that before making the challenged order, the Commission failed to consider the items definitely specified by Section 15 (6). And it must be annulled."

The Commission has not followed the procedure as

set out in Section 13 (3) and (4), in the present case, and its order fixing intrastate rates is therefore invalid.

The exigencies of the acute railroad situation which existed in 1931, did not justify the Commission in setting aside State sovereignty, which in the present case is shown to have exerted its independent power wisely and with due regard for the welfare of both carriers and shippers by excepting from the State surcharge a list of commodities including only those whose producers were in such dire financial distress that they could not bear additional burdens of expense without complete collapse. Their plight was even worse than that of the railroads.

In the case of *Atchison, Topeka & Santa Fe Railway Company v. United States, Interstate Commerce Commission, et al.*, 284 U. S. 247, 248, 76 L. Ed. 273, the Supreme Court holds:

> "We are thus brought to the fundamental considerations governing the authority of the Commission. It has broad powers and a wide extent of administrative discretion, with the exercise of which, upon evidence, and within its statutory limits, the courts do not interfere. The important and salutary functions of the Commission to enforce public rights are not to be denied or impaired. But the Commission, exercising a delegated regulatory authority which does not have the freedom of ownership, operates in a field limited by constitutional rights and legislative requirements. Its duty under paragraphs 1 (5), 3 (1) and 15 (1) of the Interstate Commerce Act with respect to the prescribing of reasonable rates and the preventing of unreasonable or unjustly discriminatory or unduly preferential practices, has not been changed by the Hoch-Smith Resolution. *Ann Arbor R. Co. v. United States*, 281 U. S. 658, 669, 74 L. Ed. 1098, 1105, 50 S. Ct. 444. The legal standards governing

> the action of the Commission in determining the reasonableness of rates are unaltered * * *."

In these recent cases, as in many others, the Court has held the Commission to a strict conformity with the requirements of the law in the performance of its duties.

(4)

THE ORDER IS INVALID BECAUSE IT IS NOT SUPPORTED BY THE ESSENTIAL FINDINGS REQUIRED TO SUPPORT AN ORDER INTERFERING WITH INTRASTATE RATES.

We have pointed out that the Commission made no finding as to the reasonableness of the interstate rates, or of the intrastate rates. It made no finding that Louisiana State traffic was not contributing its fair proportionate share to the transportation burden. It made no finding as to the revenue which could reasonably be expected from the Louisiana rates as increased by the surcharges, or that the intrastate rates as altered would during the period from December 16, 1932, to March 31, 1933, inclusive, produce or were likely to produce additional income necessary to prevent an undue burden upon the carriers' interstate revenues. On the contrary, the Commission in its report quotes from the *Florida Log Case, supra*, as follows:

> "The commission made no findings as to the revenue which had been derived by the carriers from the traffic in question, or which could reasonably be expected under the increased rates, or that the alteration of the interstate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service,"

and declines to follow this admonition of the Supreme Court in *Florida v. United States, supra,* and explicitly says:

> "A finding as to the future revenue effect of increased rates is not, strictly speaking, a finding of fact but a prediction. The evidence may be such that a prediction may be made with reasonable assurance of accuracy, and in such instances it sufficiently approximates a fact so that a finding is justified. In other instances the result may be wholly problematical, and no definite finding can be justified. We have never felt that we ought to forbid a proposed increase in rates on the sole ground that we are unable to find that it will accomplish its purpose, where the outcome is plainly a mere matter of judgment. The decision of such questions of judgment is a responsibility of management, and we are not the managers of the railroads.
>
> "In *Ex Parte* No. 103, voluminous evidence in regard to the probable revenue result of the proposed 15 per cent increase in rates was presented by shippers and little or none by the railroads. In view of competitive conditions, the trend of commodity prices, and other factors, we were convinced that such an increase would in the end hurt rather than help the earnings of the carriers, and hence disapproved it. We were not persuaded that the much smaller surcharges, which we finally approved, would have a similar result. **The evidence did not justify a definite finding on this point, and we left the application of these surcharges to the judgment of the managements.** If the results were unfavorable, the managements were also left free to eliminate the surcharges or reduce the rates still further. A similar policy should, we believe, be followed in this proceeding." 186 I. C. C. 626 (R. 22.)
>
> * * * * * * * * * * *
>
> "Where we make such a finding (of unjust discrimination) and require an increase in the in-

> **trastate rates, it is to be understood that we conclude that no positive finding in regard to the revenue outcome of the increase can be justified."** 186 I. C. C. 627. (Our emphasis.) (R. 23.)

Since the Commission was unable to make a finding in regard to the revenue outcome of the increase in the intrastate rates by the addition of the surcharges, the order must be condemned under the rule laid down in *Florida v. United States, supra.*

(5)

THE DISSENTING OPINIONS OF FOUR COMMISSIONERS IN THE LIGHT OF SUBSEQUENT EVENTS SHOW THAT THERE WAS NO SUBSTANTIAL DISCRIMINATION AGAINST INTERSTATE COMMERCE TO BE REMOVED.

The Commission was far from unanimous in its report. Commissioner Lewis concurred as to those States where all increases had been denied, but as to the excepted commodities in the other States, such as Louisiana, he dissented except insofar as the record disclosed actual discrimination against persons and localities, holding that the action of the majority is "an undue and unwarranted invasion of state jurisdiction." (In *Part 5—Louisiana* there is no finding of discrimination against persons and/or localities.)

He further says:

> "The record conveys to my mind the strong impression that in a number of instances State commissions exercised a careful judgment, on the records before them, not unlike that which we exercised

in considering probable diversion of traffic, substitutions, and the inability of certain industries and commodities to stand increases, or increases beyond a certain amount. The Supreme Court said in the *Wisconsin Case* that the power to exercise unified control of intrastate and interstate commerce provided by the act of 1920 was only 'to the extent of maintaining efficient regulation of interstate commerce'; that the 'Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce and must leave appropriate discretion to the State authorities to deal with intrastate rates as between themselves on the general level which the Interstate Commerce Commission has found to be fair to interstate commerce.' Evidently 'the level' is not in all instances to be attained by identical increases."

* * * * * * * * * *

"I believe that there are additional instances in which we should not have attempted to set aside exceptions as to particular traffic made by State authorities." 186 I. C. C. 665, (R. 57, 59).

Commissioner Aitchison dissented on the grounds that (1) appropriate findings to establish federal jurisdiction had not been made; (2) that it did not satisfactorily appear that the increases if made would give added revenues, and (3) that the State commissions had simply exercised their discretion as to matters within their jurisdiction.

Commissioner Aitchison's sound reasoning is a formidable arraignment of the errors of the majority. In part, he says:

"The reasonableness of the interstate rates involved could not be determined in such a character of proceeding; the commission went to some pains

to make clear that it in nowise was determining the question of reasonablness under section 1 of the act. No such finding is now made in this proceeding; in the light of the theory of the carriers (who are virtually if not in form, complainants against the States) as voiced upon argument no such finding can here be made within the scope of the issue presented. **But a determination of the reasonableness of the interstate rates is a necessary prerequisite to the finding of prejudice in respect of State rates against interstate rates, and lacking such a finding in this or any prior proceeding, jurisdiction is lacking to make a finding striking down the law of the State.**" (R. 59.)

"(2) Beyond this jurisdictional obstacle, the record is not persuasive that the increases in the State rates now required will result in any added revenues. The report discloses the highly speculative character of the testimony adduced by the carriers. Mathematical calculations as to what revenues would be if the traffic of recent years continued to move in past volume have little if any probative force, in the light of the conditions of the day. *Calif. Growers' & Shippers' Protective League v. S. P. Co.*, 185 I.C.C. 299. Particularly is this true when the interstate rates before us are by their terms limited to March 31, 1933, and have but a few months to run.

"(3) By and large, the action of the State commissions in exempting the traffic under consideration from the application of the surcharges appears to be in harmony with our own action in surveying the field to determine what interstate traffic would be able to bear temporary increases, and our refusal to permit general increases in respect of innumerable commodities as to which it appeared that increases would diminish revenue by diverting traffic or blocking its movement by rail. **Similar latitude in discretion should be accorded to the authorities of the States. With the**

exercise of their discretion we may not interfere, unless the case of unlawful transgression of the interstate field is clear. The action of the State commissions here vacated is at least as likely to conserve the revenues of the rail carriers as that prescribed by the majority, and in such circumstances, the presumption of validity of the State action with which we start can not be said to be overcome." (186 I. C. C. 666, R. 59, 60.) (Our emphasis.)

Commissioner Brainard also dissenting, says:

> "I am of the opinion that the record is insufficient to justify the conclusions of the majority, to warrant the exercise of the power asserted, or to sustain the proposed orders prescribing the level of intrastate rates." (186 I. C. C. 667, R. 60.)

Commissioner Tate in a most vigorous dissent, says:

> "I dissent from every portion of the report which seeks to compel the addition of such surcharges." (Intrastate.)
>
> * * * * * * * * * *
>
> "I do not believe this commission has ever had a record upon which the rates resulting from the addition of surcharges could be held to be reasonable rates. In so far as the case may be said to be a revenue case, I do not believe the carriers have made a record which carries the burden of showing that the revenues would really be increased by the addition of these surcharges. For me, it is not sufficient merely to show that, if the same amount of traffic was carried by rail carriers with the surcharge added as was carried without the surcharge, greater revenue would result. This, of course, would be obvious, if that were all. The record is at least in equipoise as to whether there have been and would be, for the future, greater revenues resulting from

the additional surcharges than would result if the surcharges were not imposed. The report of the majority cites various general-revenue cases where there have been general advances or reductions. I do not regard them as in point here. The commission unanimously denied the 15 per cent increase which was sought. Had the commission added one-half of 1 per cent, or 1 per cent, or 1.5 per cent, or any other conceivable general percentage, then I think those cases would have been in point, in that the various States were permitted to assume the burden of showing where any particular form of traffic or commodities should not be made subject to the general advance. But this the commission did not do in this case. It undertook, upon what I have considered an insufficient record, to pick out in advance certain commodities upon which alone it would allow rates to go in without suspension; and even as to those so picked out it did not allow a uniform surcharge but allowed some three or four different amounts of surcharge.

"I do not believe, in a case of this kind, that the burden can be said to be shifted to the States to take an article out of the rule, when the commission itself has seen fit not to apply a general rule, but to choose, itself, certain articles as to which a surcharge is to apply, and then to fix a different surcharge for different articles in the chosen list. I see nothing to take, in this kind of a proceeding, the burden off the carriers to justify the increase in rates, which is the general rule." (186 I. C. C. 668-669, R. 60, 61.)

Where four of the commissioners so clearly and sharply disagree with the majority, and state the law as it has been interpreted by the commission and by the courts, in numerous cases cited in this brief, their dissents are entitled to more than the weight given to the dissent which

gives no basic reasons and uses no argument founded on precedent to support the opinion.

(6)

THERE WAS NO EVIDENCE BEFORE THE COMMISSION DEALING WITH THE PERIOD COVERED BY INTRASTATE SURCHARGES, AND NO FINDINGS WERE MADE AS TO THE RESULT OF THE APPLICATION OF THE SURCHARGES DURING THAT PERIOD.

The period during which the intrastate surcharges prescribed by the Interstate Commerce Commission would have applied had they become effective was from December 16, 1932, to March 31, 1933, inclusive; or 3½ months.

There was no evidence before the Commission dealing with this period, and no finding is made by the Commission as to the result on the revenues of the carriers had the surcharges been applied on intrastate traffic on the exempted commodities during that period.

No forecast is made by the Commission as to the increases in revenues had these surcharges been applied in this 3½ months, and no evidence was before the Commission from which an estimate of the revenues of the carriers from the surcharges could be made.

In that part of its report dealing with Louisiana intrastate rates, the Commission says:

> "It is estimated that, **based on the traffic of 1931,** the application of the surcharges on the excepted commodities would produce additional annual revenue of $26,420 to the Gulf Coast Lines, $53,470 to the Missouri Pacific Railroad Company, $1,848 to the New Orleans & Lower Coast Railroad

> Company, $108,442 to the Texas & New Orleans Railroad Company, $92,198 to the Texas & Pacific Railway Company, $12,493 to the Kansas City Southern Railway Company, and $101,798 to the Illinois Central. The Louisiana & Arkansas Railway Company would receive $37,911 additional revenue on sand, gravel, and crushed stone. Railroad traffic men expressed the opinion that, notwithstanding possible diversions of traffic to other transportation agencies, the addition of the surcharge to the intrastate rates would produce an increase in revenue." (R. 35, 36.)

These figures were obtained by multiplying the intrastate tonnage of the several commodities which moved over the Louisiana railroads by the amount of the surcharge.

The report in *No. 25,135, Part 5, Louisiana*, was issued September 29, 1932 (R. 11), and was based upon evidence taken many months before (May 6-7, 1932, R. 159), while the order covered a very limited period long subsequent to the Commission's reports in *Fifteen Per Cent Case, 1931*, which were issued October 16, 1931 (R. 62), and December 15, 1931, respectively.

That the Commission itself did not take the evidence as to the estimated additional revenues that would have accrued to the Louisiana carriers from the application of the surcharges on intrastate traffic for the year 1931 as a basis for results from the application of such surcharges during the 3½ months period remaining after the order in controversy was issued, is clearly shown by the following language used by the Commission in its report:

> "* * * While the evidence before us would in many instances justify findings of undue or unreasonable advantage, preference, or prejudice as

between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, this evidence is more or less fragmentary, and **we shall therefore confine our findings to the matter of unjust discrimination against interstate commerce. Where we make such a finding and require an increase in the intrastate rates, it is to be understood that we concluded that no positive finding in regard to the revenue outcome of the increase can be justified.** Every finding of unjust discrimination will be accompanied by a saving clause, such as was approved by the Supreme Court in the *Wisconsin* case, and we shall require the surcharges to be applied on the intrastate traffic only so long as they are contemporaneously maintained on corresponding interstate traffic." (Our emphasis.) (R. 23.)

It is apparent that the Commission, having in mind its permissive authority to the carriers to apply interstate surcharges, fully realized that it would be futile to anticipate the result of applying surcharges to the intrastate freight "rates now in force and applicable to the intrastate transportation of said traffic within the State of Louisiana," and was unwilling to find from the facts of record what the outcome of the application of the surcharges on intrastate traffic would be. Certainly if a finding as to the revenue outcome could have been justified it was the duty of the commission to make such a finding.

The caution exercised by the Commission in failing to make a **"positive finding in regard to the revenue outcome of the increase,"** was equivalent to a finding that no substantial discrimination against interstate commerce had been shown as a result of the Louisiana commission's action in excepting a small list of commodities which were in no position to bear the increase, from the surcharges.

The Commission did not make the essential findings necessary to support its order because the evidence before it afforded no basis for such findings.

The precaution was well-founded, for the **third supplemental report of the Commission on further hearing, in** *Fifteen Per Cent Case 1931, supra,* based on an investigation made by the Commission in the midst of the period in which the Louisiana intrastate surcharges would have been applicable, says:

> "* * * The carriers in many instances have found it impossible, due to the above-described conditions and the resulting increased competition with other agencies of transportation, to maintain the rates and surcharges as originally established. In some cases the surcharges were removed, and in others, although the surcharges as such were retained, the basic rates were reduced sufficiently so that when the surcharges were added to them the total was equal to or less than the former basic rates. In both cases the surcharges have, therefore, as a practical matter, disappeared. The extent to which such reductions have occurred can not be accurately determined upon this record but it appears to have been considerable." 191 I.C.C. 369.

Thus, the whole spirit and letter of the law as it affects the regulation of intrastate rates by the Commission has been violated by the order of December 16, 1932, and the divesting of the State regulatory commission of all authority over State rates is directly in conflict with the Supreme Court's interpretation of the act as set out in the *Wisconsin* case, *supra.* The Court there says:

> "It is said that our conclusion gives the Commission unified control of interstate and intrastate commerce. It is only unified to the extent of maintaining efficient regulation of interstate commerce

> under the paramount power of Congress. It does not involve general regulation of intrastate commerce. Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce, and **must leave appropriate discretion to the State authorities to deal with intrastate rates as between themselves on the general level which the Interstate Commerce Commission has found to be fair to interstate commerce."**

The Commission's order in the present case is not only not "directed to substantial disparity which operates as a real discrimination against, or obstruction to, interstate commerce," but it fails to "leave appropriate discretion to the State authorities to deal with intrastate rates as between themselves," which the Supreme Court in the *Wisconsin* case says it must do.

We have seen that the Commission's decision is in direct conflict with the decision of the Supreme Court in the *Florida Log Case, supra,* because of its failure to make the basic findings which are necessary where State rates are involved. The Commission's report and order under review is also arbitrary because it has attempted to require the carriers in the State of Louisiana to increase their intrastate rates (none of which were shown to be on a lower basis than interstate rates), while not making similar requirements as to the intrastate rates of other States.

From the Commission's report it appears that many of the surcharges have not been made effective in other States, and that no order as to such States has been made. The Commission enumerates the States of Alabama, Florida, Mississippi, North Carolina, Tennessee, Virginia and Ohio, but it is shown by the record that in practically no

States of the Union have all of the increases allowed by the Interstate Commerce Commission, been made on intrastate traffic. It also appears that in many instances the carriers have not applied the increases, as later pointed out by the Commission in its third report in *Fifteen Per Cent Case, 1931.* 191 I.C.C. 361.

In Arizona no increases were permitted on any important State traffic and yet, because the Arizona carriers "are apparently willing to accept the State commission's viewpoint," the hearing as to Arizona rates was cancelled, and the proceeding with reference thereto was discontinued." No order has been made increasing the intrastate rates of Iowa, Nevada and Washington. Proceedings in these cases having been vacated, set aside and discontinued on the 25th day of July, 1933 (see Appendix "A"). The arbitrary action of the Commission was violative of all principles of right and justice of the Interstate Commerce Act, and of the Constitution of the United States.

(7)

THE COMMISSION HAS MANY TIMES HELD THAT IT HAS NO POWER TO DISTURB INTRASTATE RATES UNTIL IT HAS DETERMINED THE REASONABLENESS OF THE INTERSTATE RATES.

In re Slatting Cars for Watermelons, 78 I.C.C. 732, the Commission holds that before the Commission can condemn an intrastate regulation as resulting in unjust discrimination against interstate commerce, the propriety of the charge on interstate traffic must be established.

In re Ohio State Rates on Sand, Gravel, Stone and Paving Blocks, 85 I.C.C. 66, the Commission holds that it is necessary to inquire as to what is the general level of rates

on commodities under consideration which the Commission has found to be fair to interstate commerce in territory involved, and whether there is substantial disparity between this level and that of the intrastate rates before it can disturb intrastate rates.

In *Hunter Bros. Mercantile Co. v. American Ry. Exp. Co.*, 107 I.C.C. 313, the Commission holds that before an intrastate rate, required by State authority, can be changed by the Commission, it must affect interstate commerce injuriously to a material extent.

In *Atlas Portland Cement Company v. Chicago, B. & Q. R. Co.*, 81 I.C.C. 1, the Commission holds that the reasonableness of the interstate rates must necessarily be determined although not alleged in the complaint, before a determination can be made of the issue of undue preference and prejudice.

The Commission has, in *Virginia Corp. Com. v. Aberdeen and R. R. Co.*, 136 I.C.C. 173, recognized the correctness of our contention. In that case it says:

> "We pass to the point which the interveners make with respect to the reasonableness of the rates in issue. Where the issue is under section 3 and only interstate rates are involved, we can make an order requiring the removal of undue prejudice without regard to the level of the rates. If in complying with such an order the carriers transgress section 1, the rates so filed can be suspended and dealt with accordingly. Where the issue is between intrastate and interstate rates, however, and undue preference of intrastate shippers or commerce and undue prejudice to interstate shippers or commerce are shown, it is necessary in the first instance to determine whether or not the offense is caused by the intrastate or the interstate rates. Plainly we can not require intrastate rates

> to be raised above a maximum reasonable level in order to cure a disparity with interstate rates, and where the intrastate rates have been fixed, as they have been here, by the order of a State commission, they can not be increased by the carriers without an order from us. This situation is recognized in paragraph (4) of section 13, which provides that where we find that any rate made or imposed by authority of any State causes any undue prejudice to persons or localities engaged in interstate commerce or any unjust discrimination against such commerce, we shall prescribe the rate 'or the maximum or minimum, or maximum and minimum, thereafter to be charged,' for the purpose of removing such prejudice or discrimination. Obviously such an order can not be made without consideration of the reasonableness of the rates in issue."

In *Rates on Sulphuric Acid from Natrona*, 148 I.C.C. 408, the Commission held that when it acts affirmatively under section 13, it fixes what are and will be reasonable interstate rates, and then finds on a showing of similarity in transportation conditions and competition between shippers in interstate and intrastate commerce, and considerations of carrier revenue, that the lower state rates create undue prejudice to shippers in interstate commerce, and directs the removal of such undue prejudice and preference and unjust discrimination **by the establishment of the rates found to be reasonable for interstate transportation.**

The long continued and uniform practice of the Interstate Commerce Commission in interpreting the procedure to be followed where rates made or imposed by State authorities cause any undue prejudice to persons or localities engaged in interstate commerce, or any unjust discrimination against interstate commerce, is entitled to great weight. *Louisville & Nashville Railroad Co. v. United States*, 282 U. S. 740, 75 L. Ed. 672.

The present case is the second departure by the Commission since Section 13 was amended by Transportation Act, 1920, from its otherwise unbroken practice of establishing a state-wide level of just and reasonable interstate rates and then requiring the intrastate rates to be raised to that level in order to sustain an order fixing state-wide intrastate rates. The other case was the *Florida Log Case, supra,* which was set aside by the Supreme Court.

(8)

MERE GENERAL PERMISSION OF THE COMMISSION TO ALL CARRIERS TO APPLY CERTAIN SPECIFIED SURCHARGES ON SOME TRAFFIC AND DENYING THEM THE AUTHORITY TO APPLY SURCHARGES ON OTHER COMMODITIES, IS NOT THE PRESCRIBING OF JUST AND REASONABLE RATES IN THE MANNER REQUIRED BY SECTIONS 1 AND 13 (4), IN REMOVING DISCRIMINATION AGAINST INTERSTATE COMMERCE CAUSED BY A DISPARITY IN INTRASTATE AND INTERSTATE RATES.

The Commission relies upon section 15a, added to the *Interstate Commerce Act* by the *Transportation Act, 1920,* (41 Stat. L. 488, *U. S. Code,* title 49, sec. 15a), to justify its action in directly prescribing intrastate rates without first determining the reasonableness of the interstate rates and entirely disregards the provisions of sections 1, 13 (4), 15 (7) and 15a. Section 15a has carefully preserved the rate-making powers under the other sections of the act. It contains definite requirements in that respect. Paragraph (2) of section 15a is as follows:

> "(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that

carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation; **Provided,** That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country."

In the case of *Eagle Cotton Oil Co. v. Southern Ry. Co. et al.*, 51 F. (2d) 443, the Court says:

"(2). The Commission's order in the *Fifteen Per Cent. Case, supra,* effective July 1, 1917, authorized a general increase of 10 cents per ton throughout the country, but did not purport to grant permission to advance any particular rate. The order of the Director General in 1918 likewise was dealing with all rates, and had no particular reference to rates on coal; besides it was not the equivalent of an order of the Commission, and the Commission by section 10 of the Federal Control Act (40 Stat. 456) was given the power to suspend or set it aside. But with the aid of the Director General's order the rate did not exceed $1.80 per ton, which was less than the rates approved by the Commission upon the basis of which it awarded reparation to appellant. The carriers rely on *Ex parte* 74, *supra,* which authorized an increase of 25 per cent. in the general level of all rates, but without approval of any particular rate, as their authority for increasing the rate on coal shipped from the Alabama mines to Meridian to $2.25 per ton; and then claim that the rate became $2.03 per ton in 1922 as a result of

the Commission's decision in *Reduced Rates, 1922, supra.* The most that can reasonably be contended for in support of the proposition adopted by the trial court that the $2.03 rate was Commission-made is that it resulted from adding to and building up the rate of $1.20 that was authorized by the Commission. **Aside from the fact that the Commission's order entered in 1915, establishing the $1.20 rate had expired by limitation long prior to the decisions in *Ex parte 74* and in *Reduced Rates 1922*, the law, as we understand it, is that orders of the Commission authorizing a general upward revision or adjustment of rates are not to be construed as giving approval of or prescribing particular rates."** * * * (Our emphasis.)

In *Atchison, T. & S. F. Ry. Co. v. Arizona Grocery Co.*, 49 F. (2d) 563, (affirmed in *Arizona Grocery Co. v. Atchison, T. & S. F. R. Co.*, 248 U. S. 369, 76 L. Ed. 348) the Court says:

"It was thus evidently contemplated by Congress that the Commission would not fix a particular rate to the exact cents to be collected by the carrier, but should in every case fix a rate which is the maximum rate which the carrier can charge. This was the legislative method pointed out by Congress to the Commission for fixing by it of freight rates. It is true that the language of the subsequent amendment now in force and hereinabove quoted, taken alone and without considering the cardinal purpose of the act, might lead to the conclusion that the Commission might either fix a just and reasonable rate or a maximum rate, **but in view of the history of the legislation and its cardinal purpose it is clear that the maximum rate to be fixed by the Commission must be a reasonable rate.** In this connection it should be observed that in the numerous decisions by the courts considering the question of freight rates before the enactment of

> section 15 in its present form (Act Feb. 28, 1920, 41 Stat. 484, [49 USCA par. 15]), **the court has invariably referred to the administrative power of the Commission as a power to fix rates that are reasonable. No other thought has apparently entered the mind of the judges who are so frequently called upon to pass upon the power of the Commission under the Hepburn Act and the amendments thereto.** *Chicago, R. I. & P. Ry. Co. v. U. S.* (D. C., 1925) 6 F. (2d) 888; *Houston Cotton Exch. v. A. & A. R. R. Corp.* (1924) 87 I.C.C. 392; *Id.*, 93 I.C.C. 268; *Chicago, R. I. & P. Ry. Co. v. U. S.* (1927) 274 U. S. 29, 47 S. Ct. 486, 71 L. Ed. 911; *Montrose Oil Ref. Co. v. St. L. S. F. Ry.* (D. C., 1927) 25 F. (2d) 750; *Id.* (1923) 78 I.C.C. 572; *Id.* (1924) 95 I.C.C. 96; *Mellon v. World Pub. Co.* (C.C.A. 1927) 20 F. (2d) 613; *World Pub. Co. v. Director General* (1919) 53 I.C.C. 491." (Our emphasis.)

In affirming the case of *Arizona Grocery Co. v. Atchison, T. & S. F. R. Co.*, 76 L. Ed. 348, 248 U. S. 369, the Supreme Court says:

> "The Hepburn Act and the Transportation Act evince an enlarged and different policy on the part of Congress. The first granted the Commission power to fix the maximum reasonable rate; the second extended its authority to the prescription of a named rate, or the maximum or minimum reasonable rate, or the maximum and minimum limits within which the carriers' published rate must come. When under this mandate the Commission declares a specific rate to be the reasonable and lawful rate for the future it speaks as the legislature, and its pronouncement has the force of a statute. This Court has repeatedly so held with respect to the fixing of specific rates by state commissions, and in this respect there is no difference between au-

thority delegated by state legislation and that conferred by Congressional action.

"But it is suggested that the mere setting of limits by Commission order leaves the carrier free to name any rate within those limits, and, as at common law, it must at its peril publish a reasonable rate within the boundaries set by the order; that as it has the initiative it must take the burden, notwithstanding the Commission's order, of maintaining the rate at a reasonable level, and will be answerable in damages if it fails so to do. This argument overlooks the fact that in declaring a maximum rate the Commission is exercising a delegated power legislative in character, that it may act only within the scope of the delegation; that **its authority is to fix a maximum or minimum reasonable rate; for it is precluded by the statute from fixing one which is unreasonable, which by the statute is declared unlawful. If it were avowedly to attempt to set an unreasonably high maximum its order would be a nullity.**" (Our emphasis.)

The above cases clearly define the rate-making powers of the Commission. It must follow the procedure set out in the act. When fixing just and reasonable rates (and it can fix no rates except those that are just and reasonable), it acts as a legislative body, and its acts are subject to the same tests as all other legislation. The mere granting of an option to add a surcharge to an interstate rate, without any evidence as to the resulting rate, is not a fixing of rates in the manner prescribed by law.

In no case decided in Federal or State courts of highest resort, have we found the power of a rate regulatory commission upheld where the plain mandate of the law has been disregarded, as has been done in this case as a matter of expediency.

(9)

THE ARBITRARY NATURE OF THE COMMISSION'S ORDER.

The Commission not only declined to make the findings which the Supreme Court in the *Florida Log Case, supra,* has stated are necessary to support an order prescribing intrastate rates as a means of removing unjust discrimination against interstate commerce, but the order itself is of the most arbitrary character. We have pointed out that by its terms the order prescribing Louisiana intrastate rates "freezes" these rates and deprives the Louisiana Public Service Commission of its authority to change them so long as the order remains in force. As to interstate traffic the Commission had exercised its discretion in excepting from the surcharges a list of selected commodities, for the reason that such commodities could not bear an increase. There is no finding in any of the reports of the Commission cited in this brief as to whether the surcharges allowed were added to existing rates or reduced rates, and no reference is made to evidence as to what rates the surcharges would be superimposed.

In its first report in *Fifteen Per Cent Case,* 1931, *supra,* "The carriers offered no evidence with respect to the rates on any particular commodity or kind of traffic other than general assertions in testimony by three presidents, one from each territory, that on much traffic the increased rates would produce revenue substantially in proportion to the percentage sought, they offered no evidence as to the effect which the increase would have on the movement of all or any traffic. They presented no witness familiar with traffic conditions, and resisted the

attempts of shippers to call their traffic officers to the stand." (R. 79.)

The only method provided in the act for allowing rates proposed by the carriers to become effective on their own initiative, when they are protested, is found in Section 15 (7). When tariffs are filed under this section proposing increased rates, the carrier must assume the burden of proof that such rates are just and reasonable. The act provides:

> "At any hearing involving a rate, fare, or charge increased after January 1, 1910, or of a rate, fare or charge sought to be increased after the passage of this act, the burden of proof to show that the increased rate, fare, or charge, or proposed increased rate, fare, or charge, is just and reasonable shall be upon the carrier, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible." (*Interstate Commerce Act, sec.* 15(7), *last pp., U.S.C., title* 49, *sec.* 15.)

The carriers refused to assume this burden, and closed the record in the *Fifteen Per Cent Case, 1931*, with "no evidence with respect to the rates on any particular commodity or kind of traffic."

The Commission, closing its eyes to these defects in the record, granted authority to apply the surcharges. The reports in *Fifteen Per Cent Case, 1931*, devoid of the essential findings necessary to support an order increasing interstate rates, left the Commission in the position where it had to act in disregard of the law, and this it did. Its action was arbitrary in the extreme.

(10)

Subsequent Reports of the Commission In Fifteen Per Cent Case, 1931, Show That the Expected Revenues From the Surcharges Did Not Materialize, and That There Was No Foundation for a Prediction as to Increased Revenues as a Result of the Intrastate Surcharges, Which Finding It Had Refused to Make.

As an aftermath of the failure of the surcharges to accomplish their purpose, we find in the last report in *Fifteen Per Cent Case*, 1931, *supra*, the dissenting opinions of Commissioner Eastman (now Federal Coordinator of Railroads), concurred in by Commissioner McManamy, and those of Commissioner Porter and Commissioner Tate.

We excerpt from these dissenting opinions the following, Commissioners Eastman and McManamy dissenting:

> "Since this extraordinary remedy was prescribed for the special purpose which then appeared to be paramount, conditions have changed in at least three important respects:
>
> "1. The demand for railroad freight service has further decreased, to such an extent that it has been found impossible to protect fixed charges through the operation of the surcharge plan. It was necessary to create the Reconstruction Finance Corporation for the further protection of this situation, and now it seems probable that a number of railroads will have to be reorganized. For the future, therefore, the carriers wish to abandon the pooling feature of the surcharge plan which was originally the vital part of it, and to treat the surcharges as ordinary rate increases.
>
> "2. Economic conditions, although they were bad enough in 1931, have continued to grow worse, and the level of commodity prices has in general continued to fall. The statement which we made

in 1931, therefore, that the "relation of the general level of freight rates to the general level of commodity prices is a factor which can not be disregarded, particularly in a time of general prostration," has even more force now than then.

"3. In an indeterminate, but certainly a very large, number of instances the railroads found it impossible to maintain the rates as increased by the surcharges. Instead of eliminating the surcharges in such instances, however, they very generally retained it and reduced the basic rate. In most, if not all, of these instances the total charge is now less than it was before we added the surcharge. Actually, therefore, the surcharge has been *eliminated, although it still exists in form.*"

* * * * * * *

"The surcharge plan was in the nature of a special tax assessed upon industry for what was believed to be the general good, and which we made it possible to assess through the exercise of our discretion in permitting tariffs to go into effect without suspension. Such exercise of discretion was, I believe, justified as a matter of Statesmanship under the extraordinary conditions then existing. The special purpose of the plan, however, has failed and that purpose is to be altogether abandoned. Moreover, conditions have so changed as to make such a special tax much less justifiable.

"The railroads of the country are in desperate financial straits, but they are in such a condition because the other industries and the people of the country generally are in similar or worse straits. When we adopted the surcharge plan we eliminated most farm products from its application, because of the prostration of agriculture and the very low level to which the prices on such products had fallen. There was no other reason for the elimination. Under the circumstances we concluded that an increase would result in unjust and unreasonable rates, and in a burden which could not "reason-

ably be borne under present conditions.' The instant record shows that this conclusion is now equally applicable to the coal industry, the lumber industry, the citrus fruit industry, and many others.

"In the profound economic disturbance which now exists, the railroads have been and are, so far as their rates are concerned, a sheltered industry. I have figures before me which show that in 1931 the average ton-mile revenue was 45.7 per cent higher than in 1913. If adjustments are made for the great increase in average length of haul since 1913 and for the change in proportions of major traffic groups, the level in 1931 may have been as much as 68 per cent higher than in 1913. The figures are not available for 1932, but such reductions in rates as were made in that year were in whole or in part offset by the surcharge increases. Contrast this with the well-known facts as to what has happened in the case of commodity prices generally, with the exception of steel rails, where the price, most unfortunately for the railroads and for the country, has been maintained near the pinnacle by the stubborn will of producers without insight or vision." (191 I.C.C. 372, 373, 374).

Commissioner Porter, dissenting, in part says:

"The policy of the majority in continuing these surcharges with the thought that it will help the carriers is an iridescent dream. Why we should temporize with these surcharges, as is done here by the majority, is beyond my comprehension. They were authorized only as a temporary measure of relief. They have failed utterly in their purpose. Their continuance is a positive injury to the carriers and shippers alike. Why should we prolong the uncertainty as to their permanance caused by the chaotic and discriminatory situation caused by their existence?

* * * * * * * * * * *

"The policy pursued here of authorizing these

increased rates of the carriers is contrary to that being engaged in at present by every other industry. If there be a single other industry that is raising its prices at this time, it has entirely escaped my attention. We all know they are doing just the opposite. A walk down Main Street of any community and a glance in any store window, or a look at the advertisements of any paper, demonstrates the efforts of business generally to attract sales by the lowering of prices. Why should railroads with nothing to sell but transportation be the only industry immune from such a policy, especially when, as never before, they are haunted by four competitors who are all rapidly gaining in the race? Thanks to the wisdom of the executives in charge of many railroads, as I shall hereinafter show, they are pursuing no such policy of raising rates—only this commission is doing that.

* * * * * * * * * *

"Not only have the carriers been unable to maintain their level of rates of a year ago, plus the surcharge, but the situation of intrastate rates is far from a happy one. Several of the States have refused point blank to put in any of these extra rates for intrastate application within their States, and are fighting their going in, in the courts. A large number of States have exempted a portion of their traffic from their burden, particularly in instances where it was a commodity of great concern to the State and moving in large volume in the particular State. There are very few States where they have been allowed to be applied on all traffic intrastate. While this is the hodge podge situation at the present, we have every reason to believe that it will become very much worse, for the reason that not a single State commission has advised us that they favor the continuance of these surcharges, but, on the contrary, almost all of them are actively opposed to it. It is extremely doubtful if a half

dozen of the States will authorize the carriers to put them in again intrastate after March 31, 1933." 191 I.C.C. 375, 376, 377.

Commissioner Tate, dissenting, in part says:

"I did not believe the additions, by whatever name they might be called, ought to have been granted when they were first granted, and I cast the one dissenting vote, though contenting myself with merely recording my dissent in the report, without a separate expression. I believe I was right then, and that, in view of the economic condition of the various industries the products of which are made to bear the surcharge, I am on still firmer ground in not agreeing to a continuation of these surcharges. The commission had in many cases, and has since in many other cases, said what would be reasonable maximum rates. If these findings were correct, then the addition of any amount, by whatever name called, would make unreasonable rates. I think it is almost axiomatic or, at least, that it must logically follow, that if the commission was in error in putting in the surcharges, the mere fact that they had been in could not constitute a legal ground for continuing the surcharges and thus prolonging and projecting the error, even though, confessedly, at least some inconvenience might arise to the carriers in readjusting their basic rates by reason of the denial of these surcharges. Paragraph (7) of section 15 of the interstate commerce act provides that 'At any hearing involving * * * a rate, fare, or charge sought to be increased after the passage of this Act, the burden of proof to show that the increased rate, fare, or charge, or proposed increased rate, fare, or charge, was just and reasonable shall be upon the carrier, * * *.' I have never believed that there was such a record upon which the increases were allowed as could be said to be such a record as would meet the requirement that the carriers shall assume and carry said burden. On the contrary, I am of the opinion that the record

> demonstrates by the preponderance of testimony that the various industries, the products of which were made subject to the surcharge, were in such condition as that they could not stand the surcharge without grave injury and that a proper consideration of the relationship of the value of the service rendered to the charge made would not permit these additions. I can not see how the use of some magical or cabalistic word, such as 'surcharges,' took these increased rates, which the shippers would have to pay, out of the plain letter of the law. It seems to me that any increase sought ought to be proposed in a tariff filed in the regular way and be subject to the regular machinery of possible suspension and investigation." 191 I.C.C. 380, 381.

These recent expressions from members of the Commission in the retrospect, show how faulty it would have been to make a finding as to the revenue outcome of the surcharges applied to the ever changing rate schedules and the complete collapse of the surcharge plan even before the order in controversy was entered.

CASES RELIED UPON BY THE APPELLANTS.

The United States and the Commission rely upon the cases in which the Commission has removed discrimination against intrastate commerce by prescribing state rates, to support the controverted order.

We have examined these cases and in every case where an order of the Commission fixing State rates has been reviewed and upheld by the courts, there have been findings by the Commission as to the effect of the maintenance of the intrastate rates upon the revenues of the carriers, as well as the prescribing of just and reasonable interstate rates which were used as the standard to which State rates were made to conform.

Thus, in the *Wisconsin Case, supra,* there were find-

ings as to the effect of the maintenance of the intrastate fares upon the carriers' revenues. Similar findings were made in the *New York Case, supra.* In both cases a fare of 3.6 cents per mile was declared reasonable for interstate traffic, and State rates were required to be the same.

In the *Georgia Case, supra,* reasonable maximum rates were first prescribed, and to their level intrastate rates were required to be raised.

In *Alabama v. United States,* 283 U. S. 776, 75 L. Ed. 1406, the Commission first prescribed a general level of intrastate rates on fertilizers and fertilizer material, and made definite findings supported by evidence as to the revenue outcome of the State and interstate rates. The intrastate rates were required to be raised to the previously prescribed reasonable interstate level of rates.

In *Louisiana Public Service Com. v. Texas & New Orleans R. Co., et al.,* 284 U. S. 125, 76 L. Ed. 201, the Commission first established just and reasonable interstate rates, and prescribed the same schedule on intrastate traffic, making adequate findings of the revenue outcome.

In *New England Divisions Case,* 261 U. S. 184, 67 L. Ed. 605, the Commission was not dealing with undue prejudice or unjust discrimination but was engaged in fixing divisions of joint through rates in which neither the public nor the States had any interest. While the same principles apply to the fixing of just and reasonable divisions as apply to the fixing of just and reasonable rates, the removal of unjust discrimination against interstate commerce is governed by rules of procedure which require in the first instance the fixing of just and reasonable rates, on interstate traffic.

In *Dayton-Goose Creek Ry. v. United States,* 263 U. S. 456, 68 L. Ed. 388, the main question before the court was

the constitutionality of the recapture provisions of the Interstate Commerce Act as amended by Transportaion Act, 1920. (Ch. 91, Sec. 422, Sec. 15 (a), 41 Stat. at L. 456, 489-491, Fed. Stat. Supp. Anno. 1920, p. 11).

The Supreme Court held the recapture provisions to be constitutional, but in the decision it does not anywhere declare that the rate-making provisions of the act are changed or abrogated, or that the procedure to be followed under Section 13 (3) (4) in removing unjust discrimination against interstate commerce growing out of relationship of interstate and intrastate rates, is to be disregarded when the Commission has proceeded in the first instance under Section 15 (a) to fix interstate rates that will yield the carriers supposedly increased revenues.

(NOTE. The recapture provisions of the Interstate Commerce Act added by Transportation Act 1920, were repealed by *Emergency Transportation Act*, 1933, title II, sec. 206 (a), approved June 13, 1933.)

CONCLUSION.

We submit that the decree of the lower court enjoining the order of the Commission was correct and should be affirmed, and

Respectfully,

GASTON L. PORTERIE,
Attorney General of the State of Louisiana,

WYLIE M. BARROW,
Special Assistant to the Attorney General of Louisiana.

CERTIFICATE.

I, Wylie M. Barrow, do hereby certify that copies of the within brief have been duly served by mail upon all opposing counsel of record.

Baton Rouge, La., October 2, 1933.

APPENDIX "A"

"ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 25th day of July A. D. 1933

No. 25982
SURCHARGES ON INTRASTATE TRAFFIC WITHIN THE STATE OF IOWA

No. 25984
SURCHARGES ON INTRASTATE TRAFFIC WITHIN THE STATE OF NEVADA

No. 25987
SURCHARGES ON INTRASTATE TRAFFIC WITHIN THE STATE OF WASHINGTON

No. 25135
INCREASES IN INTRASTATE FREIGHT RATES AND CHARGES, PART 5—LOUISIANA

No. 25135
INCREASES IN INTRASTATE FREIGHT RATES AND CHARGES, PART 10—TEXAS

No. 25135
INCREASES IN INTRASTATE FREIGHT RATES AND CHARGES, PART 12—UTAH

It appearing, That by orders dated May 18, 1933, in Nos. 25982, 25984, and 25987, the Commis-

sion upon petition of certain common carriers by railroad operating in the States of Iowa, Nevada, and Washington entered upon investigations to determine whether the failure or refusal of the respective State rate-regulating authorities to permit a continuation of the increases on intrastate traffic similar to those permitted by this Commission for interstate traffic, in *Fifteen Per Cent Case, 1931,* 178 I.C.C. 539, 179 I.C.C. 215, and 191 I.C.C. 361, causes or will cause any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate commerce or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce; and that by orders dated May 18, 1933, the Commission reopened No. 25135, Part 5—Louisiana, Part 10—Texas, and Part 12—Utah, for further hearing upon the question of the lawfulness of the rates resulting from the refusal of the respective State rate-regulating authorities to permit application after March 31, 1933, of the surcharges on intrastate traffic similar to those permitted by this Commission for interstate traffic by supplemental report entered March 7, 1933, in *Ex Parte* 103, *Fifteen Per Cent Case, 1931;* and

Whereas, In proceedings of similar nature we have heretofore rendered decisions applying the law to the facts developed of record and entered orders accordingly, such orders, where affirmative in nature, being effective for a considerable portion of the surcharge period, the time now intervening prior to the expiration of the surcharges involved is too short to make it possible for any orders which the Commission may enter in these proceedings to become effective and rates in compliance therewith published and thereafter maintained for any substantial period of time, probably not for a period sufficient to justify the expense of tariff publication:

It is ordered, That the said orders of May 18, 1933, be, and they are hereby, vacated and set aside and that these proceedings be discontinued.

By the Commission.

GEORGE B. McGINTY,
(SEAL) Secretary."

APPENDIX "B"

STATUTES RELIED ON.

The Interstate Commerce Act.

"*Sec.* 13. (*As amended June* 18, 1910, *and February* 28, 1920. (*U. S. Code, title* 49, *Sec.* 13.)

"(3) Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made on imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this Act with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to

avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this Act."

"(4) Whenever in any such investigation the Commission, after a full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

"*Sec.* 15a. (2) *and* (3) (*Added February* 28, 1920.) (*U. S. Code, title* 49, *Sec.* 15a.)

"(2) In the exercise of its powers to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: **Provided,** That

the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust and unreasonable and to prescribe different rates for different sections of the country."

"(3) The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such percentage shall be uniform for all rate groups or territories which may be designated by the Commission. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation: **Provided,** That during the two years beginning March 1, 1920, the Commission shall take as such fair return a sum equal to 5½ per centum of such aggregate value, but may, in its discretion, add thereto a sum not exceeding one-half of one per centum of such aggregate value to make provision in whole or in part for improvements, betterments or equipment, which, according to the accounting system prescribed by the Commission, are chargeable to capital account."

CORRECTED COPY

SUPREME COURT OF THE UNITED STATES.

No. 17.—October Term, 1933.

The United States of America, Interstate Commerce Commission, Texas & New Orleans Railroad Company, et al., Appellants, *vs.* The State of Louisiana, Louisiana Public Service Commission and Louisiana Highway Commission.	Appeal from the District Court of the United States for the Eastern District of Louisiana.

[November 6, 1933.]

Mr. Justice Stone delivered the opinion of the Court.

This is an appeal under the Urgent Deficiencies Act of October 22, 1913, 38 Stat. 208, 219, 220, Judicial Code, § 238, from a final decree of a District Court, of three judges, for Eastern Louisiana, which made permanent an interlocutory decree staying an order of the Interstate Commerce Commission. The order directed the removal of unjust discrimination against interstate commerce resulting from intrastate rates maintained by rail carriers in Louisiana, by prescribing an increase in intrastate rates on specified commodities, in amounts equal to increases in interstate rates on the same commodities, established by appellant carriers under the authority of an earlier order of the Commission in the *Fifteen Per Cent Case, 1931.* 178 I. C. C. 539; 179 I. C. C. 215.

In the *Fifteen Per Cent Case* the Commission, acting under § 15a (2), of the Interstate Commerce Act, after an extensive hearing, granted permission to the carriers of the country to add a surcharge to established rates in amounts varying with different commodities but not exceeding in any case 10% of the basic rate. Thereupon the railroads of the country, including those operating in Louisiana, added the permitted surcharges to their interstate rates and most states authorized like increases in their intrastate rates. Others failed to increase the intrastate rates, and the State

of Louisiana by its Public Service Commission refused to allow the increase on some thirty-seven commodities and on all less than carload lots. The carriers filed petitions invoking the exercise of the power of the Commission under § 13 (3) and (4) of the Interstate Commerce Act to remove undue discrimination by those intrastate rates against interstate commerce. This proceeding, after an extended investigation and hearings by the Commission, resulted in the order challenged here. *Increase in Intrastate Rates,* 186 I. C. C. 615. It requires the carriers to charge, upon specified commodities and all less than carload lots in intrastate commerce in Louisiana, "rates which shall be not lower than the rates now in force and applicable to the interstate transportation of said traffic within the State of Louisiana, plus the surcharge authorized by the findings in the Fifteen Per Cent Case . . . on corresponding interstate traffic, so long as such surcharges are maintained, . . ."

In setting aside the order, the court below rested its decision upon the inadequacy of the Commission's findings. It thought that as the Commission, in the *Fifteen Per Cent Case, 1931,* did not find that the several interstate rates resulting from the authorized surcharges would each be just and reasonable, there was no basis for raising the intrastate rates under § 13 (3) and (4), see *Florida* v. *United States,* 282 U. S. 194; cf. *Georgia Pub. Serv. Commission* v. *United States,* 283 U. S. 765, and that the order could not be supported as a revenue measure because there were no findings that the increased rates would produce an increase in carrier income. It is also argued here that the order assailed is invalid because the Commission, in its earlier order, did not require the carriers to increase their rates interstate, but only permitted them to do so at their option.

1. The Transportation Act of 1920, by §416, 41 Stat. 484, §15a (2) Interstate Commerce Act,[1] for the first time laid on the Commission the affirmative duty to establish rates for interstate rail carriers

[1] "Sec. 15a (2). In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment, earn an aggregate annual net

" . . . so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income, equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: . . . "

See *Wisconsin Railway Comm.* v. *C. B. & Q. R. R.*, 257 U. S. 563; *Dayton-Goose Creek Ry.* v. *United States*, 263 U. S. 456; *New England Divisions Case*, 261 U. S. 184, 189. Associated provisions calculated to preserve carrier income in the interests of an efficient transportation service were those empowering the Commission to permit pooling of traffic and earnings, § 407, § 5 Interstate Commerce Act, and to fix minimum, as well as maximum rates, § 418, § 15 (1) Interstate Commerce Act, to preclude the absorption of traffic of weaker competitors by cut-throat competition. See *New England Divisions Case, supra*, 190.

Under earlier acts the Commission had been given power to remove unjust discrimination in rates or service between shippers or localities, § 2 Act of February 4, 1887; 24 Stat. 379, 380; § 3 Interstate Commerce Act, and rates in interstate commerce were required to be reasonable "in the sense of furnishing compensation for the particular service rendered and the abolition of rebates". *Wisconsin Railway Comm.* v. *C. B. & Q. R. R.*, *supra*, 585; § 1 Act of 1887; § 4 Act of 1906; 34 Stat. 589; § 15 Interstate Commerce Act. Under these acts the Commission had the power to order the carriers to desist from discrimination against interstate shippers by intrastate rates, *The Shreveport Case*, 234 U. S. 342, but until the Transportation Act it was without authority to prescribe intrastate rates.

By § 416 of the Transportation Act, § 13 (4) Interstate Commerce Act, directly involved here, the Commission was given power to remove unjust discrimination by intrastate rates against

railway operating income, equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: *Provided*, that the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country."

interstate commerce, by prescribing minimum intrastate rates.[2] This Court has consistently held that this section is to be construed in the light of § 15a (2) and as supplementing it, so that the forbidden discrimination against interstate commmerce by intrastate rates includes those cases in which disparity of the latter rates operates to thwart the broad purpose of §15a to maintain an efficient transportation system by enabling the carriers to earn a fair return. So construed, § 13 (4) confers on the Commission the power to raise intrastate rates so that the intrastate traffic may produce its fair share of the earnings required to meet maintenance and operating costs and to yield a fair return on the value of property devoted to the transportation service, both interstate and intrastate. *Wisconsin Railway Commission* v. *C. B. & Q. R. R., supra,* 586, 587, 588, 589, 590; *New York* v. *United States,* 257 U. S. 591, 601; *Florida* v. *United States, supra,* 211; *Louisiana* v. *United States,* 284 U. S. 125, 131; see *Nashville, Chattanooga & St. Louis Railway* v. *Tennessee,* 262 U. S. 318.

As pointed out in the reports of the Commission in this case and others (see *Increased Rates, 1920,* 58 I. C. C. 220; *New York Passenger Fares,* 59 I. C. C. 290), § 15a, by its terms, commands the Commission, in providing the required revenue by increasing rates, to deal with the carriers of the nation as a whole or in broad classes, and as this Court recognized in the *New England Divisions Case, supra,* 197, 198, this requirement would be nullified and the administrative arm of the Commission paralyzed, if instead of adjudicating upon the rates in a large territory on evidence deemed typical of the whole rate structure, it were obliged to consider the reasonableness of each individual rate before carrying into effect the necessary increased schedule.

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[2]Section 13 (4): "Whenever in any investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice or discrimination. . . ." (41 Stat. 456, 484.)

It cannot be supposed that Congress, in placing this duty on the Commission, intended, in the absence of some express provision compelling it, that the Commission should follow a procedure which would preclude its acting effectively, if at all. That such was not its intention appears from the words of the statute. It does not, in terms, command the Commission to find that each rate prescribed under § 15a is just and reasonable, as prerequisite to a general increase in rates. It provides only that the action of the Commission in raising rates so that they may yield a fair return is to be "in the exercise of its power to prescribe just and reasonable rates", with the qualification, in the proviso to the granted authority to increase rates, "that the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable. . . ." When read in the light of the subject matter to which the section is to be applied, the production of increased revenue by a nation-wide or group increase of rates, it is apparent that they cannot rightly be construed to require the Commission as a condition of any action by it to find the reasonableness of each individual rate. If the Commission were required to do that, there would be no occasion for the granted latitude to modify those rates found to be unjust or unreasonable.

The natural construction of the section, consistent with its language, and making possible its practical operation, is that which has uniformly been given to it by the Commission. § 15a (2) does not relieve the Commission from the responsibility of seeing to it that the rates as increased are to be reasonable. But in performing the duty broadly to increase carrier revenue, it is enough if the Commission, in the first instance, makes such inquiry and investigation as would enable it to say that the prescribed increases when applied to members of the group will generally not exceed a reasonable maximum. The extent of this inquiry and the detail of investigation can not be marked by this Court with certainty. The size of the group dealt with, the nature of the traffic, the urgency of the relief demanded, these and other factors should condition the Commission's procedure in each case. But with proper procedure, the ultimate finding that the rates as generally applied are reasonable, supported by evidence and accompanied by suitable reservation of the rights of all interested

parties to secure modification of any particular rate which, when challenged, is found to be unjust or unreasonable, complies with the statute. The requirement that increase of rates by Commission action is to be in the exercise of its power to prescribe reasonable rates is thus observed but in conformity to the administrative necessities which the proviso contemplates.

In the *Fifteen Per Cent Case, 1931,* the Commission, after a careful survey, found itself faced with an acute emergency calling for prompt action to give temporary financial relief to the transportation system. The Commission's report amply discloses that the reasonableness of the rates as generally applied was a controlling consideration in fixing the varying amounts of the surcharges and in selecting the particular items to bear them. This is manifested in its conclusion that "the freight articles selected by us in this connection were those for the transportation of which we believed the rates could be somewhat increased without causing the traffic to be transferred to other agencies of transportation and without bringing about an undue disturbance in business conditions or transgressing the bounds of maximum reasonable rates." It was necessary, under the circumstances, that the increases take effect without suspension, but this was done subject to the proviso that "the resulting rates will in all respects be subject to investigation and determination as to the lawfulness of particular rates or schedule of rates, as provided by the Act." The Commission's action complied with § 15a, see *New England Divisions Case, supra,* 197.

In proceeding under § 13 (3) and (4) to make the order, challenged here, the Commission made no express finding that the increased intrastate rates would be reasonable, but incorporated the findings bearing on the reasonableness of the increased interstate rates made in the *Fifteen Per Cent Case, 1931.* Although § 13 (4) does not in terms require the Commission to find that the intrastate rates which it prescribes are reasonable, it is not questioned that the section confers no authority on the Commission to require intrastate rates to be raised above a reasonable level, see *Georgia Pub. Serv. Commission* v. *United States, supra,* 770; *Florida* v. *United States, supra,* and the appellees insist that the order is defective because, in conforming the intrastate rates to the reasonable level of interstate rates, the Commission did not find specifically that in each case the rate as increased would be just and

reasonable. But we think that the relationship of the section to § 15a (2), already described, is such that the standard of reasonableness prescribed by the latter is that necessarily set up for § 13 (4) which supplements it. The considerations already detailed which define that standard for § 15a necessarily define it for § 13 (3) and (4), which creates a duty in "dovetail" relationship to that imposed on the Commission by § 15a. *Wisconsin R. R. Commission* v. *C. B. & Q. R. R., supra,* 386. The administrative difficulties which would preclude performance of the duty imposed by § 15a if the Commission were required to find that each individual rate prescribed is just and reasonable, would similarly prevent compliance with that under § 13 (4). Since neither can be performed effectively without performance of the other, the standard of reasonableness to which the Commission must conform is necessarily the same under both, and that implies that under § 13 (4), as under § 15a (2), reasonable latitude must be given for modification of particular rates found to be unreasonable.

The case of the Louisiana rates was not alone before the Commission, and it should not be treated as though it were. A number of other states, contesting, in the aggregate, a wide range of rates, were heard at the same time. Had the Commission been required to go into the circumstances of each item with particularity the purpose of its original order would have been defeated. It sufficed that the Commission found that Louisiana showed nothing in the circumstances of its agriculture and industry or its traffic conditions so different from the rest of the country as to lead to the conclusion that the intrastate rates, raised to the reasonable general interstate level, would not themselves be reasonable; and that it saved the rights of interested parties to test the reasonableness of any individual rate.

A question different from that before us was presented in *Florida* v. *United States, supra.* There the discrimination was essentially one of undue prejudice against shippers, confined by the evidence to rates prevailing in northern Florida. It involved only one railroad and one commodity. It was not the general revenue proceeding authorized by § 15a. The Court was careful to point out that the Commission had undertaken to establish a state-wide level of intrastate rates without any findings with respect to the corresponding interstate traffic which would tend to support the conclusion that a state-wide alteration of intrastate rates was necessary to protect the interstate commerce involved.

2. The objection that the finding of unjust discrimination by the intrastate rates against interstate commerce is unsupported by any finding that the increased rates would produce increased revenue is rested upon the statement, separated from its context in the Commission's report, "we conclude that no positive finding in regard to the revenue outcome of the increases can be justified." It is manifest that any finding of undue prejudice to interstate commerce, based upon the failure of prevailing intrastate rates to contribute their fair share to the support of a national transportation system, must necessarily rest upon a prediction that an increase of the intrastate rates will result in an increase of revenue, a prediction involving, especially since 1930, many elements of uncertainty. There are no formal requirements for the findings to be made by the Commission in this type of case, see *Manufacturers R. R. Co.* v. *United States*, 246 U. S. 467, 490, and while the particular form in which they were cast here is not to be commended, the report, read as a whole, sufficiently expresses the conclusion of the Commission, based upon supporting data, including estimates of experienced railroad traffic men, to which the report refers, that the probability of increased revenue was sufficiently great to make the increase of rates a reasonable exercise of sound managerial judgment. This, we think, meets the requirements of the statute.

In the *Fifteen Per Cent Case, 1931*, the Commission had said: "The plan outlined in the appendix we estimate will produce between one hundred million and one hundred and twenty-five million dollars' increased revenue on the basis of present traffic, if applied both state and intrastate". And in the proceeding resulting in the present order it said: "We find that in view of the surcharges which have become effective interstate, in the freight rates on the classes and commodities here in question, under our findings in *Fifteen Per Cent Case, 1931, supra*, respondents' intrastate rates in Louisiana on the same classes and commodities, to which no corresponding surcharges have been added, have resulted and will result in unjust discrimination against interstate commerce, except in the case of intrastate rates on sugar cane". This finding could only mean, when applied to the question in hand, that the intrastate traffic was not bearing its fair share of the burden of maintaining a national transportation system, by contributing such increased revenue as would result from an increase in rates. This

the Commission proceeded to point out in detail when it said further: "It is estimated that, based on the traffic of 1931, the application of the surcharges on the excepted commodities would produce additional annual revenue" in substantial amounts named with respect to each of the carriers participating in the traffic, and continued, saying: "Railroad traffic men expressed the opinion that, notwithstanding possible diversion of traffic to other transportation agencies, the addition of the surcharge to the intrastate rates would produce an increase in revenue". And as bearing upon the estimated revenue increase the Commission said: "There is nothing of record which warrants the conclusion that the situation as to fertilizer, cotton seed, cotton seed products, fresh vegetables, or sweet potatoes is different in Louisiana from what it is in other parts of the country, or in surrounding states where surcharges are now being assessed. Similar allegations with respect to the possible effect of truck competition and as to the ability of various commodities to stand any increase, were made in *Ex parte 103* [*The Fifteen Per Cent Case, 1931*] and were considered in reaching our conclusions. Nor is there anything to show that the movement of sweet potatoes will be adversely affected by the application of a surcharge thereon without a similar charge on other potatoes".

Like findings were held sufficient to support similar orders, which had been entered in this same proceeding, when attacked before district courts of three judges in Montana and Kentucky. *State of Montana* v. *United States*, 2 F. Supp. 448; *Commonwealth of Kentucky* v. *United States*, 3 F. Supp. 778. Nor do they differ in any material way from those in *Wisconsin Passenger Fares*, 59 I. C. C. 391, 393, which were deemed adequately to support the finding of undue prejudice in *Wisconsin Railroad Commission* v. *C. B. & Q. R. R.*, *supra*, 580. See also *Georgia Commission* v. *United States*, *supra*; *Alabama* v. *United States*, 283 U. S. 776; *Louisiana Public Service Commission* v. *Texas & New Orleans R. R.*, 284 U. S. 125.

3. The fact that the order of the Commission for the increase of interstate rates was permissive only does not affect the validity of its order prescribing minimum intrastate rates. The interstate rates after the addition of the authorized surcharges were lawful rates in interstate commerce, which was discriminated against by the failure to make corresponding increases in intra-

state rates. This discrimination the Commission removed in the manner authorized by § 13 (4), by prescribing minimum intrastate rates at the same level as the interstate rates. The order precluded any unauthorized interference with state regulatory power by providing that it should be effective only so long as the surcharges upon interstate rates should be maintained by the carriers.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.